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ABSTRACT

The unit confronts the student with the historical evolution of the role of the government employee in the American democracy, and suggests that a society's concept of this role reflects its presumptions about itself, as well as the changing circumstances with which it has to cope. The unit contrasts the "natural aristocracy" and "democratic patronage" concepts with the modern notion of a "neutral" professional civil service, and asks what happens to the last --and what happens to the responsiveness of government-- when one-sixth of the working population are government employees. A corollary question deals with the role of the expert in a democracy. Should he be neutral in questions of public policy? What are his responsibilities, both moral and practical, to make known and/or act on his own superior knowledge? The unit is designed primarily for college-bound students. (ED 028 190 to 028 199, ED 032 331 to 032 340, and SO 000 162 to 000 169 are related documents). (Author/SBE)

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TEACHER'S MANUAL

DEMOCRACY AND ITS SERVANTS:

A STUDY IN ALLEGIANCE AND RESPONSIBILITY

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This material has been produced
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This unit is designed to bring the student to a consideration of the functional relationships of social institutions by considering the civil service in the United States as an example of an institution undergoing change to accomodate other changing institutions. A definition of this functionalism is given by Radcliffe-Brown:

> [Functionalism is seen as a condition in which various forces develop a harmonious working relationship.]

This unit undertakes the task of showing how the civil service changed with each major social change in American history. Functionally speaking, there has been great harmony. Historically speaking, that harmony appears less absolute in terms of the clamor of conflict attending each transformation. Furthermore, as resolutions were finally approached, society was in the process of further development, and the new solutions were in turn becoming obsolete.

Today we are once again in the process of change due in part to the impact of the technological revolution, and once again such institutions as the civil service are seeking their proper role in the new world. It is possible, this time, that the civil service may exert far greater power in the social system of the future than it has ever done in the past. This consideration makes the study of the civil service, a badly neglected topic, of vital importance.

Presently, our society seems to want a bureaucracy of loyal experts that will carry out any policy directed from above. In a democracy, however, the direction from above should come from the sovereign people, and civil servants are a part of the "sovereign people," or at least they find it difficult to think otherwise. Today one-sixth of the working population of the United States are civil servants in that they work for a government, either Federal, state or local. Can we "politically neutralize" that percentage of the population in accordance with the demands of the Hatch Act, which forbids all but the most basic political activity. Should we do so in a democracy?

Compounding the problem is the fact that much of the civil service today is composed of highly trained and highly educated people, expert in many fields in which society must make policy decisions. It may be that the experts are better qualified to make these decisions than are the people or their representatives. It is natural for these experts to think so. What should be

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[1] A. R. Radcliffe-Brown, Structure and Function in Primitive Society (The Free Press, Glencoe, Illinois, 1952), 180-181.

their role if they are convinced that the good of the country would be better served by following a policy they suggested which was rejected by superiors or by elected officials? Is it the patriotic duty of the "hired expert" to follow his own best judgment in the field of his own expertise? This problem is complicated by the growth of a quasi-civil service, an increasing number of advisory scientific personnel outside of the career civil service. As society becomes increasingly complex and specialized, a basic problem faces democracy in that political leaders have no intelligent way of assessing the advice of the expert, save by conferring with other experts.

The historic development begins with a consideration of the ideals of Washington, Adams, and Jefferson who wanted "loyal experts" to implement their policies. This necessitated the rotation of persons and jobs concurrent with the change of party in control of the executive. Jackson developed this into a positive creed, and the spoils system became the life blood of the political parties; still very much present in 1967 on state and local levels. The abuses of the system lead to a movement of reform stressing merit. This movement bore its first real fruit after the assassination of Garfield (1881) which was caused by a particularly bitter dispute over the patronage power in New York. As soon as the civil service became more independent of political patronage, civil servants started to form associations and unions. Although traditionally these groups are not identified with the militancy of the labor movement, these unions and associations in the present day are showing a militancy new to the American scene, and the sixties have already witnessed a rash of strikes which have temporarily paralyzed essential government services.

In its drive to achieve collective bargaining with the government, the union uses the ultimate weapon, the strike. To gain an audience in our mass society, it may well take mass action to receive notice by the various media of mass communications. In any case society has been served notice that the servant can arbitrarily terminate his service even in the face of legal opposition. In so doing the classic question is raised as to who is the master--the servant or the state? As long as only salaries, working conditions, and promotions are at issue, collective bargaining is a reflection of the fact that the servant wishes a better life in return for faithful service. Eventually, with the increasing expertse of the civil servant and the increasing need for the services of expertise in a highly complex world, the question of higher policy making will soon be a matter for collective bargaining. What is the weight of educated expert scientific opinion as opposed to non-scientific political consensus?

In addition the birth of automation has increased the complexity of the problem by promising to out-merit the merit system of civil service through the use of machines designed to do more efficienctly and speedily a growing number of jobs on all levels of the service. This could make for a "very neutral" bureaucracy, indeed.

General opinion has held the two party system as indispensible to the functioning of democracy in the United States. We are witnessing today the rapid erosion of the patronage system whereby party loyalty to group programs was assured. Without patronage and its responsible control of government jobs, can the party system survive? Will the expert and his "machine" be willing to receive directives from political parties in office, or will he operate more and more on his own scientific initiative?

There is no doubt that since World War II the scientific expert has come into his own. Many times he finds himself making policy decisions for which he has no special competence but is rather acting as a private citizen. At this point, he is certainly not acting as a "neutral instrument of policy."

The problem of neutrality is further compounded by the problem of personal morality resulting from the logical demands placed upon the individual at the Nuremberg trials. The defense pleaded that the accused were "neutral servants of the State, just following orders." Should the individual in the service of the state obey orders he might consider immoral? Should he drag his feet in the implementation of such orders, or should he join an association or union to pressure for a change of policy, gradually taking a dynamic role in policymaking as an interested expert?

Thus the student will be brought from the fact of civil service strikes in today's news, past the question of whether these strikes are justifiable or not, into the realization that these same strikes present us with dilemma. Is the civil servant, whether publically or privately employed, to be the neutral arm of the state carrying out duties for which he bears no personal responsibility? Or is the civil servant to be more dynamic as a policy maker, so expert that he knows better than everyone else.

No simple answers are forthcoming. The student should be aware that these are open ended problems. If he finds the perfect solution, he is probably wrong. If he throws up his hands and quits, he has at least seen the problem. Functionally speaking, however, he will at least recognize that the problem will be resolved, although the resolution may not be in accord with present social ideals.

SECTION I

SOME ISSUES RAISED

The unit opens with material designed to show what appears to be growing anarchy within the ranks of civil service. The selection from the Chicago Tribune (#1) reports a strike of public aid workers in Chicago. This raises the usual response, namely that the agency is unable to change conditions of salary and employment, as it lacks authority to set fiscal policy. It may be remembered that the nation was rocked the following summer by widespread riots by people dissatisfied with their living conditions.

The selection from the Youngstown Vindicator (#2) presents the nightmarish situation that is usually depicted when one thinks of strikes by civil servants. The police and firemen of Youngstown, Ohio, refused to answer calls and even defied the injunction issued by the judge. This selection also underscores the civil servant's most common complaint, low pay. Did the judge have any legal right to order a salary raise? Perhaps the students can see some political maneuvering in this situation.

Calvin Coolidge's telegram and proclamation (#3 and 4) are included for purposes of comparison. His famous statement is quoted faithfully like a prayerful chant, but government in the 1960's is actually dealing with strikers rather than firing them en masse. What conditions have changed? Perhaps some of the students will argue that Coolidge's dictum should be applied today.

In the selections relating to the New York teachers strike of 1967 (#5-8) the focus shifts from the usual question of salary to matters of professional and public policy. Should teachers as a group be involved in matters of policy? If not, how can society stop such practices? If so, what is the position of both elected and appointed public officials? The decision of Judge Nunez reiterated the traditional position that government employees may not strike, and imposed a fine on the union amounting to some $3.00 per member and a fine and a jail sentence on the president of the union. Can such laws prevent future strikes? Will anarchy necessarily result? How can society protect itself from such anarchy?

The excerpt from Schlesinger's A Thousand Days (#9) shows a President of the United States unable to get the civil servants in the State Department to respond to his policy. What should be the attitude of the professionals in the Department to the "amateur meddling" of the President in the foreign affairs of the United States?

"Wherein lies the power of Government?" becomes the ultimate question in this section and remains an underlying theme throughout the unit. If this power resides in the elected official, what is the role of the expert? If the power resides in the expert, why do we bother to elect officials? Is there another alternative, a division of power? If so, will there be perpetual tensions? Is this a new problem peculiar to the growing complexity of our times, or was it present in our earlier history?

SECTION II

THE GROWTH OF AN INSTITUTION

Section II focuses on the development of the civil service from the earliest days of the United States to the passage of the Civil Service Act of 1883. The accent is on the change from a rural to an industrial economy, with the accompanying readjustments in the political organization of the country.

In Part A the selections from the pen of Washington and Adams (A,1-3) show the establishment of a small body of civil servants, chosen with an eye towards loyalty and excellence in performance but still selected from the post-revolution aristocracy. To develop this point the students might be asked to draw some inferences about society at that time based on the views of John Adams. Do the students agree that "excellence" should be the paramount criterion for public service? Could they define "excellence."

On assuming office Jefferson found himself with a civil service drawn from the ranks of the political opposition. His letters (A,5-7) complain bitterly about the fact. To gain control of the government, he pruned the ranks of those whose loyalty to his party and degree of excellence were in doubt, and placed his own men into the vacancies. Why did Jefferson remove the "excellent" men appointed by his predecessor, President Adams?

The extreme partisan feeling of the election of 1828 indicated to Jackson a need for a purging of the lower ranks of the civil service. In his first Annual Message (A,10) he argued in favor of the positive good of the principle of rotation of office, a thesis sustained in a famous defense by Senator Marcy (A,11). In the draft of his inaugural message (A,8) Jefferson made it clear that he valued loyalty over excellence. In his letter (A,9) it is apparent that according to Jackson almost any man could hold an office. Perhaps some students might accept Jackson's criteria for public appointment. A discussion might be developed over how this conflicts with the values reflected in the views expressed by Adams. What do Jackson's criteria say about the society of the 1830's and the various jobs performed by the Federal government?

Jackson brought about historic changes in the civil service reflecting the growing political interest of the masses of the population. Thus, on the eve of the industrial revolution, the spoils system, an almost feudalistic manifestation of a large but simple agrarian society, was inaugurated only to become obsolete within a generation in a new world demanding merit as well as loyalty. The word spoils became tainted with the notion of incompetence, and loyalty was reduced to a semi-feudal concept based on territorial bossism.

Part B focuses on the period of industrial growth during the last quarter of the 19th century, emphasizing the interplay and conflict between the gradual passing of the old rural order and the rapid emergence of the new industrial complex.

The old order had resorted to the spoils system to retain political loyalty. Job holders needed time to work for partisan causes. A side effect, therefore, was to increase the number of jobs and to inflate the number of job-holders.

The new industrial order placed new demands upon government, thus increasing the number of Federal job holders. As it became harder to control the growing new bureaucracy because of sheer size and to pry control from the party chiefs, the new breed called for reform of the civil service. In this way administration could obtain the loyalty of the bureaucracy by neutralizing it, and efficiency would be enhanced by stressing merit as could be demonstrated through competitive examinations.

If the students are aware of some of the forces of the industrial revolution, it might be well to ask them at this point what particular groups were likely to be interested in civil service reform? Why? The theme can also be further developed by asking why the reformers were more interested in neutralizing the service rather than controlling it through partisan patronage of their own choosing? Perhaps the student will see that the bureaucracy was growing too large and becoming too impersonal for real party discipline. Also, the growing need for efficiency required that competent personnel be kept regardless of politics. Is efficiency always a good in itself?

Through the system of patronage, political parties relied heavily on contributions, both in money and time, from job holders and job seekers as can be seen from Jenckes's remarks (B,1). In breaking the patronage system, the new center of power, the industrialist, thereby forced the parties to seek support from other groups. Where could the party get campaign funds once the assessments from job holders was withdrawn? It might be an interesting exercise to have a committee of students research the vested interest of the various personages mentioned in these selections to see what power plays were being made.

The assassination of Garfield (B,7) a Republican president who advocated moderate reform, was carried out by a Stalwart office-seeker who feared for the unity of the Republican party (B,8). Such was the atmosphere of the day that the wild clamor for offices and the politician's extreme dependence on patronage (B,3-6), that the three month Senate debate over a few hundred clerkships (B,3-6), could lead to this great tragedy. The assassination served as a shock to further the cause of the reform movement. The students might be asked to comment on the nature of the political system of a country that would allow such a struggle to develop over one thousand jobs in the New York City Custom House.

The student may realize that Guiteau was more than an insane office-seeker. He thought of himself as a patriotic Republican as well. The party was in danger of splitting between the Conkling Stalwarts and Mugwumps on the very question of civil service reform. The threat of a take-over by the Democratic Party seemed very real to many at the time. To prevent this split, Guiteau chose to assassinate the Mugwump president. What might happen if a President attempted to take patronage from a Senator today?

It may be said that the assassination aided the reformers. Would the civil service law have been passed without the death of Garfield? Perhaps the death of President Kennedy and the passage of the Civil Rights bill presents a parallel. Here the student is really being asked to consider the forces behind reform. Senator Vance (B,10) suggests that the Republicans only needed the prospect of defeat at the polls to protect their appointees with the passage of the law. The more basic question is why we so often wait for a crisis before acting in a difficult situation. Can our growing insight into human social behavior help us to avoid such crises?

Ironically, it was a Stalwart President, Chester Arthur, who signed the Civil Service Reform Bill into law almost two years after the assassination (B,9). What did the law actually do to eliminate the old evils of the spoils system? It definitely did not forbid contributions of time and money. Is it likely that these old practices stopped?

Vance argued for the repeal of the law (B,10). Is there any justification for his arguments? Some present observers argue that our present two party system does not allow much difference or opinion on vital issues. One obvious example is the Goldwater theme: "A choice, not an echo!"

SECTION III

THE MODERN CIVIL SERVICE

This rather large section presents the modern bureaucracy as it developed from the New Deal to the new world of the scientific elite, where the common sense of the layman does not make sense. The focus is still on the power relationships, but as the events get closer at hand the image becomes more and more blurred. The bureaucratic structure becomes less defined as the official advisors are often more closely identified with the academic world rather than with the executive branch of government. This section is divided into three parts: the first presents charts and tables; the second presents the more conventional view of a large bureaucracy, floundering but functioning though still not without traces of patronage; the third discusses the new development of the scientific expertise in a quasi-civil service that confounds traditional description.

Part A presents figures at this point to serve as a bridge between the 1880's and the modern era. After the adoption of the Civil Service Reform Bill, the next really significant changes were brought about by the New Deal and World War II. These figures underscore the new range of problems that accompany such sheer size and complexity of functions.

The first chart shows that the competitive civil service is gaining over patronage. However, the quasi-civil service in the form of part-time advisors, which will be discussed in Part C, are excluded here. Their numbers may not be great, but they are of growing importance. It should also be pointed out to the students that the periods of percentage decline represents periods of overall growth of the service.

The graph relating to the percentage distribution of all government workers in the United States (A,2) shows the relative growth of the Federal government. Again the students should perhaps be warned that relative growth and numerical growth are quite different. In examining this chart, the student will note the relative growth of the category labeled "Other federal" which nearly doubled from 1930 to 1940.

What is the implication of the trend in the chart showing the growth in public employment from 1946 to 1965 (A,4)? Since the state and local governments are expanding their bureaucracies more rapidly than the Federal government, what new roles are being undertaken on the state and local level? Can the new state interest in police reform, education, mental health, and welfare be part of the factor that is bringing about a more militant attitude in the local unions of the police, teachers, nurses and hospital attendants, and welfare workers? In the sense that expertise is needed in coping with problems on the state and local levels, should the experts have some policy making authority and be paid accordingly? Since patronage still exist in varying degrees on the state level has its death knoll been sounded by the pressing problems of the day? Why? The problem of expertise and part-time advisors from the state and local universities is also very much an issue at all levels. In some areas union activity is more meaningful at the city and state level than at the Federal.

Part B suggests that the civil service, most certainly at the Federal level, has changed from a mere appendage or instrument of government to a position very near the center of power through its influence on policy making. Consideration of the process of policy making is the main focus.

The selections on patronage in Missouri in 1932 (B,1) campaign contributions of 1936 (B,2), and Farley's article of 1938 (B,3) show the students that political patronage did not stop with the Act of 1883 but rather continues to the present for much the same reasons: loyalty and power machines. The selection from Politics and Public Service by Leonard White (B,4) presents the thesis that as of 1938 it was no longer necessary to question partisan loyalty in American politics because of the existence of a very broad consensus. The puzzling last sentence implies that White saw the role of the civil service as that of "stabilizer" nullifying drastic policy change rather than as that of a truly neutral instrument of policy. He thereby seems to say that, in fact, there can be no absolute neutrality in a bureaucracy. This theme can be developed by referring to the complaints of the elected policy makers. Does the student think it better for our society if minor civil service officers have no inclination except to follow the orders of the officials elected by the people? Even regardless of party policies? The class might discuss the implications of either answer by referring to White's use of the European examples. Farley also suggested that party loyalty was still needed to carry out F.D.R.'s program. Does this parallel the Nazi experience? If White is supported in arguing that we do not need patronage, students could be lead to infer the power of patronage by noting that the Postmaster-General is still a member of the Presidential Cabinet. What function does thatpost have today. What function does a precinct captain or a ward committeeman have? What is his usual source of income? Why not count on volunteers?

The Hatch Act (B,5) shows the response to any threat of a politically overactive bureaucracy. It should be emphasized that the Hatch Act applies only to the Federal government and does not touch upon the influence of local patronage on local elections. What laws apply to the state and local level in the students home area? It would be interesting to have a committee of students look into the German Civil Service Act of 1937 mentioned by White and investigate the purge of the German Civil

Service of 1933. They might also discover that since the Nuremberg trials, the state accepts liability for the wrong-doing of the civil servant if he is following orders.

The selections from "Little Oscars and Civil Service" (B,6) and from Schlesinger's One Thousand Days (B,7) show the continuing problem of an unresponsive or even hostile bureaucracy resisting policy change and the continual call for a return to some form of partisan influence under both the Republicans and Democrats. But a new element has entered in the form of expertise. The functions of government have become so numerous and the issues so complex that the necessary experts are almost impossible to replace; yet the elected policy makers must rely on them for information and even for advice.

The resulting semi-independence of these bureaucrats is really a main issue in this unit. The civil service can be seen as a drag anchor in a political storm (White) or a dead weight in a fair breeze as argued by those who wish to change a policy. But the bureaucracy complains of recent political purges from both parties and seeks independence.

The statement on bureaucratic ideology drawn from Makers of Public Policy (B, 8) discusses the growth of the civil service as a whole as a manifestation of the desire of each department head to expand his program and to enlarge his staff in order to improve his services to the public. This statement also points to the source of policy making and suggests that this power will continue to grow.

The Appleby statement (B,10) gives the views of a seasoned bureaucrat who defends the entire system as essentially democratic. He has faith in the system because he thinks that Congress still holds the reins to control the bureaucracy on matters it feels to be essential. However, his defense calls for the articulate citizen to fulfill his duty in the democratic process. This becomes essentially the problem of how an individual can get himself heard in a mass society and raises the question discussed in the next section, the expert and public responsibility.

Part C opens with an excerpt from the now famous "Farewell Address" of President Eisenhower (B,1), warning of the threat to democracy from a new technological elite. The next four selections relate to a Congressional hearing on a bill to establish a Congressional Scientific Advisory Staff. Congress is concerned with the question of the loss of its control over the bureaucracy in that the experts within the civil service are presenting problems and posing solutions to those problems beyond the understanding of the average Congressman or layman. A parallel situation also exists in the executive branch, as the President must rely on such information as experts choose to tell him. The Van Allen Belt is given as one example. Congress feels uneasy because the executive branch has its own advisory groups which must also serve to advise Congress on technical matters. The fact that many members of this advisory group come from outside the traditional bureaucracy, as shown by T. H. White in "Action Intellectuals" (C,8) demonstrates a lack of faith on the part of the President in his own established bureaucracy.

At the same time Congress feels that its own legislative sovereignty is threatened by a necessary reliance on both the independent advisory groups, a sort of quasi-civil service, sent over from the executive branch and the regular bureaucracy. This is somewhat reminiscent of the power struggle depicted by Jenckes and Vance (II,B,1 and 10), but this time the executive and legislative branches are forced to counter the power of the bureaucracy through the creation of a new and, if possible, more dependent advisory group. In effect three governmental bodies are in the process of squaring off, each procuring its own retainers for use on the battlefield of policy making! The official bureaucracy with its own experts whose numbers are constantly growing; the executive branch becoming more and more dependent on the quasi-civil service rising out of the experience of the universities; and finally, the Congress looking for its own captive expertise. This theme can be developed with some of the following questions: Why does Congress feel the need of establishing its own scientific advisory body? Can this be related to the issues raised by Jenckes in 1867 and Vance in 1886? Does Congress need its own scientific staff of advisors? It would be well to define "expertise" at this point. How does it differ from "excellence" of the Federalist civil service, and from "merit" of the Republican era? How does the situation of the expert in the modern scene relate to the search for excellence in Federalist era or to Jefferson's quest for the "natural aristocracy": are these experts the "better men" they thought should rule? Are these experts the "meritorious men" sought by the civil service reformers? Does not the American admiration for "schooling" and academic achievement rate these men alongside the "excellent" and "meritorious" or even with the "natural aristocracy" from the ranks of the poor for many of these experts are the descendants of the late nineteenth century immigration. Could the definition of a civil servant as described in the civil service bill apply to them? What would Jackson be likely to think of these men making policy decisions. If Congress should sometime in the future establish its own Scientific Staff, does this assure that the scientist will be any more understandable to the layman congressman? If not, why bother to create a new agency? What might be the effect of such a group?

Don K. Price (B,7) warns that the struggle to control scientists may result in the different groups of scientists playing up their programs to suit the ear of one branch or another.

How would a group such as C.O.S.T. affect the policy making function of Congress? Would the basic scientist be brought under control any more by such a system? What might be the effect on the legislative process if the executive and legislative branches each had a separate scientific advisory staff? How can the scientific community, with its necessary expertise, be represented in Congress? Must the Congress continue to be forced to accept at face value the advice from the executive bureaus and from semi-independent Presidential advisory groups? Is there a need for the scientist to have his programs understood, so that Congress will vote the needed funds? Why not continue as now, essentially voting on appropriation without understanding the program? Perhaps better programs may be passed by for want of understanding. How can the scientists be held accountable, and to whom are they responsible? Where does this leave the sovereignty of the people? Is the solution offered by Theodore White (C,8) that the scientist should keep the "humility of the old-fashioned teacher" sage advice or wishful thinking? What should the expert do when his expert advice goes unheeded on matters of vital importance?

SECTION IV

CIVIL SERVANTS, RIGHTS AND DUTIES

This section presents two horns of a legal and moral dilemma: on one side the "Nuremberg" problem of individual moral responsibility and on the other the professional and civic responsibility arising from the demands of the new unionism. The civic legal code demands individual and group neutrality in matters of public policy, but the bothersome problems of individual morality will not go away in spite of civic laws, and the attractiveness of union pressure on public policy affecting professional practices is not idle conjecture. Easy solutions are not apparent.

Part A opens with the statement of Mr. Carpenter at the previously mentioned Congressional Hearing (A,1) to the effect that no man can be solely objective in presenting his scientific arguments. This very lack of objectivity implies value judgments that form the basis of policy and morality.

The Oppenheimer case, as reported in Fortune (A,2) reveals a highly respected atomic scientist getting very much involved in policy issues on a level outside the limits of his experience in an area of political judgment. The issues involved the fate of the world confronted with an H-bomb war, and the implications of this are still very much present. However, the incident raised the question of responsibility on a grand scale. The Fortune article said there was "a serious question of the propriety of scientists' trying to settle such grave national issues alone, inasmuch as they there bear no responsibility for the successful execution of war plans." At this point the student might be asked if this statement is true. What is the responsibility of scientists? Perhaps Oppenheimer's own guilt complex about the A-bomb is relevant here.

Obviously Oppenheimer and his colleagues thought that they had a higher moral responsibility, as it is shown in the Science editorial by Don K. Price (A,4). The article by Bethe which originally appeared as a memorial address (A,3) shows that Oppenheimer was severely punished by being deprived of his security clearance on atomic information.

Another article from Science (A,5) gives evidence of some restrictions on those who advise government agencies. It also suggests that those who disagree with the foreign policy of the country are excluded from any area touching on security matters. The next selection, a letter to the editor of Science (A,6), shows further evidence that the quasi-bureaucracy is, at least in some minds, being merged into the civil service. This again presents the perennial problem of independence of judgment.

The next four documents relate to the Nuremberg trials (A,7-10).

Section II, Article 6c, of the Charter of the International Military Tribunal mentions ". . . inhuman acts committed against any civilian population . . . ," and Articles 7 and 8 did not free officials in Government Departments from responsibility nor allow a defense of "superior orders." Since the war, a new German law explicitly says that the state accepts liability for the wrongful acts of civil servants.[2] Will this solve the problem? It may seem far fetched to apply this doctrine of Nuremberg to the common civil servant, but the next three selections show the relevance and develops both sides of the controversy.

Some of the following questions may be helpful in developing these points. Did the Nuremberg doctrine apply especially to Dr. Oppenheimer. considering his position of authority? Is it possible that he might have felt some sense of personal guilt had he not tried to avoid the possibility of atomic war? Do the students think that the Nuremberg decisions apply to the common civil servant? What should a man in the civil service do if he is told to perform an official act he thinks immoral? What should the German civil servant have done? Were they not selected for their loyalty to the state? What should a bacteriologist do when he discovers that the work he is doing for the government is ultimately related to germ warfare? Will his resignation change anything? Finally, are there any different factors in 1960 as compared to the 1880's when neutrality for the civil servant was strongly advocated by our society? Are neutral scientists desirable?

Part B presents the historical background of civil service unions and the issues raised by the new militancy of the white-collar worker, particularly the public employee.

The first selection lists events important in the development of industrial unions. This serves as a brief review and backdrop for the much slower development of unionism for the public employee. The earliest attempts to organize public employees were greeted with great hostility. Such action was simply unthinkable. The immediate issue raised is whether civil servants could organize into any association to exert any meaningful pressure on government. The first two articles included here are most adamant in their denial, and expound the traditional stance demanding absolute loyalty and obedience to the government by the civil servant. President Theodore Roosevelt in 1902, threatened to dismiss anyone who dared address the government out of the proper chain of command (B,2). After 1912, with the passage of the LaFollette amendment to a Post Office appropriation bill (B,5), various associations of public employees were tolerated as long as they did not threaten a strike. When this even appeared about to happen the reaction was near hysteria. In 1909 President Butler of Columbia (B,3) warned of trouble ahead if civil service associations were allowed to affiliate with trade unions. At this point perhaps the students might question the values implicit in President Butler's position. In the light of the Nuremberg problem they might disagree that the civil servants' "sole obligation is to the state and its interest." They might also question whether the civil servant should be held to the same sense of obedience as the military.

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[2] Encyclopedia Britannica (Encyclopedia Britannica, Chicago, 1959), V, 750.

In 1920, during the Red Scare and shortly after the Boston Police strike, Senator Meyer (B,5) gave further reasons for rejecting an affiliation between civil service unions and labor unions. At the time the fear of having a civil service under the control of a radical labor organization was not unrealistic to a large segment of society. Unions were still looked upon as socialistically orientated. This theme can be developed with such questions as the following. Should civil servants be affiliated with labor unions? What effect would unions have on the civil servants and the civil service? What effect on government policy? Would the pressure be any different than that expressed in the bloc vote that unions already represent? What would be the effect of an alliance between civil service unions and those labor unions that have policy goals on social issues, such as the United Auto Workers and their program for the Guaranteed Annual Wage?

The FDR "no strike" letter (A,6) and the Taft-Hartley Law of 1947 (A,7) are included to establish continuity and to compare the progress of the industrial labor unions with civil service unions.

The last ten selections show the wide open situation since 1960. At present the large labor organizations must of necessity recruit new types of members into its ranks, ranks that are threatened with depletion by the prospect of automation. These new members are largely found in the civil service where unionism was not spectacularly successful due to the legal restraints placed upon its power by the government, the employer.

At the beginning of the decade President Kennedy in some degree met the demands of the civil service unions by granting collective bargaining with Federal Employee Unions (B, 8), but he did not legalize the strike, nor has it been legalized under President Johnson. From that time, however, though not necessarily directly caused by Kennedy's Executive Order, civil service unions on all levels are expanding their size and their militancy.

The new members in S.P.A.C.E. are finding unionism attractive for several reasons, as suggested by Gus Tyler (B,9). The rising expectations of today's society force a renewed interest in wages and working conditions. Society and government are increasingly dependent upon the service fields for answers to present social and scientific problems, with the result that a new sense of power is being realized by the professionals as a growing premium is placed upon their work. This conclusion is also suggested by Time (B,10). Then too, once civil servants have been stimulated into developing new answers to today's problems, they are finding increased difficulty in accepting the financial starvation of their pet projects by legislative and executive ax wielding. Such questions as the following may develop this theme: Should professional unions withhold their services if, in their collective professional opinion, conditions warrant such a move? Should they who are public employees force the public, through its elected and appointed representatives, to accept these professional policies? Do these professional experts know better than the elected or appointed public representatives, as was suggested in the Time article on public schools.

The changing conditions are underscored by the item on the unionization of the German Army (B,11). Will a unionized army of police force ever again bayonet striking workers? Could this be seen as a healthy sign? Could such an army have prevented the War Crimes committed by Germany? Why or why not?

That fact that AFSCME, as seen in The Public Employee (B,12-13), now challenges the very heart of the civil service thinking, the merit system itself and the Hatch Act which denies public employees the right to participate actively in political organizations, seems rather bland in comparison to the activities in the German Army. These developments may be more significant in that the way may be opening for civil service unions to become active in forming a political power group. This coupled with the fact that a civil employee can now join organizations unpopular with his employers (B,12) can be played against the fears expressed by Nicholas Murray Butler in 1909 and by Senator Meyer in 1920 (B, 3-5). This theme can be developed by asking the students to relate the implication of the unionization of the German Army to the views expressed in the newspaper, The Public Employee. How does this relate to the views expressed by Presi-Butler of Columbia and Senator Meyer? What do the students think about the list of syspensions (B,14)? What is the argument for forbidding public employees from participating actively in politics? Why are unions against merit rating?

Prime Minister Pearson of Canada (B,15) welcomed the civil service unions to engage in matters beyond the bread and butter issues and to be involved with "matters affecting the quality of the public service and its relationship to the people of Canada." It should be noted that the Canadian civil service, like that in France and in the Scandinavian countries, can legally strike as a last resort. Does it seem that anarchy is about to engulf Canada? Why does Canada allow its civil servants to strike against the government?

The recommendations of the Advisory Commission in Illinois (B,16) shows the typical American response to the situation. It has become apparent that the government cannot enforce a "no-strike" law if there is no machinery to avoid a strike. The students might be asked at this point to discuss the issues here. Can unions in fact bargain without the threat of a strike? Why is there any difficulty about mediation and fact-finding? President Able of U.S. Steel has suggested that strikes should be replaced by compulsory arbitration. Why do unions reject such procedures?

No law has proven completely effective in forbidding strikes if the issues are sufficiently important for civil service employees to jeopardize their jobs by going out on strike. Time underscored this point (B,17). Which of the two remedies suggested do the students prefer? Which do they think most workable?

Still the real problem remains in society's dependence on the training and, in some cases, on the professional skills and knowledge of the civil service employees. The opinions expressed by Monsen and Cannon (B,18) suggest that civil service unions will become more involved with policy issues with the aid and encouragement of the bureau chiefs. If these professionals deem conditions sufficiently drastic, should they strike against the policy-makers to force their professional opinion on the public through exerting pressure on elected representatives?

If the professional civil service employee wants a stronger voice in professional or public affairs but feels powerless in a mass society, it may be that he will feel forced to turn to union pressure tactics more frequently and more forcefully than in the past. The new unionism appears to be spreading into the professions just at the time when more and more professionals are becoming part-time members of the civil service. Is it possible that the American Federation of Teachers could organize the large universities that produce so many members of the quasi-civil service? After all, John Dewey held card No. 1 in the College AFT. It seems likely that if the new unionism continues to grow it will eventually meet and perhaps merge with the governmental bureaucratic powers. Perhaps these professional unions or associations can be seen as a counter force against the dominance of a few experts over the President or Congress. Perhaps these associations and unions will aid the experts in forcing their policies for the good or ill of the public. It is not important here for the students to be "realistic" as the future is wide open. All the factors should be used to envision the several "logical combinations."

Some questions which may develop disucssion along these lines: Is there any possible relationship between the problem of the expert facing Congress and the situation of professional unions? What happens to the public responsibility of the elected official in areas vital to modern society when he is faced with organized expertise? Who would better represent the public interest, the organized expert in professional associations or unions or the elected layman representatives provided by Federal and state constitutions? Are we possibly developing another extra-constitutional force to represent the public interest? Are these forces any different than the lobby groups which have great influence on policy making? How might they be different? Is the union tactic of the strike of a different magnitude than the financial and political pressure of the traditional lobbyist? How are the professional opinions of the associations or unions already represented in the policy making process of the legislative branches of government? Should the concept of the strike to obtain political objectives be seen as a threat or promise for the democratic process?

SECTION V

WHAT NEXT?

The issues presented in this section may nullify everything discussed in the previous sections. The situation seems to be completely open to unimagined possibilities. Donal Michael and David Bergamini (#1 and 2) imply the possibility of a bureaucracy greatly reduced in bulk but increased in efficiency. As the computer replaces the human functionaries there may be less interference with policy decisions. We may yet have the highly efficient, completely neutral bureaucracy that was the goal of most policy-makers of the past. This will also further remove the possibility of patronage which still provides a base for the political parties. On the other hand the problems of neutrality may not be solved at all, as Michael also suggests that those who understand and gather the computer based facts will be in the real position of authority. This possibility makes the position of representative government by laymen even less meaningful than before.

The selection by Bergamini mentions the instant voting of the future as a possibility for public policy-making. This idea can be played against Senator Meyer's warning against a "pure democracy." What will be some of the possible effects of automation on the civil service bureaucracy? Is there any possibility that more emphasis can be placed on the individual as more time becomes available to consider individual cases? If the human element in decision making is greatly reduced in the bureaucratic process, what effect may this have on policy making? Will this result in immediate implementation of decisions, thus eliminating the time log which now provides a period of time in which poor decisions can be amended? The professional knowledge of the social scientist will be essential, but for what humanistic values must the social scientist plan? And who will make the policy? Will it be only those experts who understand the computed based information? What implications does this bear for government as presently constituted? How can Congress make independent evaluations of the information supplied by the expert?

The last document (#3) raises the possibility of still another basic problem facing society. Traditionally, government has been the battleground for various proposed solutions to social problems, but another alternative has gained force in recent years. The large corporations, such as General Motors, General Electric, and many others, have begun, with the aid of government underwriting, to apply their own solutions and expertise to the social ills of the day. The desirability of this trend becomes the basis of a controversy over principal and motives. While considering growth of a "social-industrial complex" the teacher may want to refer students to the unit entitled Military Power in a Democratic Society which discusses the military-industrial complex.

What should be considered here is how the huge bureaucratic structure of these giant corporations will function as social planners. The student may realize that the term "civil servant" could also be applied to certain individuals in private industry in the sense that they also are engaged in public policy planning. The student might wonder why the term bureaucracy is not usually used in reference to corporation office forces. Are the bureaucracies similar? The expertise of the individuals in private industry is no different than that of governmental or university experts, but the motive of company profit may make a basic difference. Should the expert employed by the private corporation owe his total allegiance to the company profit which may affect his own pocketbook due to profit sharing, or should society expect a broader allegiance? The industrial society rejected the agrarian arrangement of political patronage which assured loyalty to the party machine and its policies. The democratic nature of the original motive disintegrated into self-interest, and the new society demanded a larger loyalty and a non-partisan neutrality. Should the post-industrial society also demand that its new "civil servants" working in the way of private corporations be equally free from self-serving interest? How can that be when the raison d'etre of a corporation is the profit motive?

There is then a five cornered game of power play over policy making between a technically illiterate Congress, an isolated executive, a potentially powerful bureaucracy, a profit minded business complex, and an organized but unintelligible group of experts such as the American Association for the Advancement of Science. Just where is the individual likely to find an effective voice amidst all these spokesmen?

If the government is already surrendering its traditional function as problem solver to corporations or if the corporations are simply moving into the void created by ineffective government planning, what other social institutions can oversee and check the activities of the privately salaried corporation experts?

Harrington asks that society ". . . build new institutions of democratic planning which can make the uneconomic, commercially wasteful, and humane decisions about education and urban living. . . ." Could this role be filled in part by professional associations or unions composed of bureaucratic experts serving both the public and private spheres?

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STUDENT'S MANUAL

DEMOCRACY AND ITS SERVANTS:

A STUDY IN ALLEGIANCE AND RESPONSIBILITY

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TABLE OF CONTENTS

I - SOME ISSUES RAISED.. 1

II-- THE GROWTH OF AN INSTITUTION.................................... 5

A. Four Early Presidents.................................. 5
B. Reform of the Civil Service............................ 13

III - THE MODERN CIVIL SERVICE....................................... 30

A. Charts and Tables...................................... 31
B. Civil Service Since the New Deal....................... 32
C. The Expert and Public Responsibility................... 36

IV - CIVIL SERVANTS, RIGHTS AND DUTIES............................... 43

A. The Moral Responsibility of the Civil Servants......... 43
B. The Civil Servant Organizes............................ 47

V - WHAT NEXT?... 61

SUGGESTIONS FOR FURTHER READING.................................... 63

SECTION I

SOME ISSUES RAISED

Increasingly in recent years public employees on all levels, from public aid workers and teachers in local school systems to diplomats in the State Department, have been the subject of news and commentary. Newspapers report strikes, and scholarly articles complain of entrenched bureaucracies. Clearly the old assumptions as to the proper role of the public employee and his relationship to the society for which he works are being challenged. The evidence in this section may help you identify some of the problems besetting both public employees and the public, as employer.

1. The Chicago Tribune carried this story on April 27, 1967:[1]

> [The account reports the strike by the Independent Union of Public Aid Employees. The Union demanded a collective bargaining agreement. The county welfare director argued that he cannot meet this demand because of government regulations on his office.]

2. Several months later, after a summer of riots in many cities, the Youngstown Vindicator reported on a strike by the city's police and firemen:[2]

> [Common Pleas Judge Rigelhaupt ordered firemen and policemen to return to work and criticized the city for failing to pay adequate wages to these men. His action was in the interest of public safety and in keeping with Ohio law. The Mayor promised that there would be no reprisals and that wages would improve.]

3. Almost fifty years before, a similar emergency occurred in Boston, Massachusetts. The Police Commissioner of that city had fired nineteen

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[1] Chicago Tribune, April 27, 1967, 1-2.

[2] Youngstown Vindicator, Sept. 9, 1967, 1-2.

men because they had joined a newly formed policeman's union. Subsequently, almost the entire police force went out on a protest strike. Asked to intervene by the President of the American Federation of Labor, the Governor of Massachusetts replied in a telegram:[3]

> [Calvin Coolidge states that he will not remove the commissioner wh m he did not appoint. He criticizes the action of the policemen's union and claims that "there is no right to strike against the public safety, anywhere any time." He promises to uphold the legal rights of the men but also to respect the rights and sovereignty of Massachusetts.]

4. When a protest arose over the formation of a new police force, Coolidge issued a proclamation outlinging his position:[4]

> The Commonwealth of Massachusetts
> By His Excellency Calvin Coolidge, Governor
>
> A PROCLAMATION
>
> [Coolidge claims that by violating the law, deserting their posts, etc., the former policemen "dispossessed themselves." Those men who remained on the job he calls heroic. Coolidge refuses to tolerate intimidation of the government and states that opposition to the forming of a new force is "treason."]

5. In recent years strikes by teachers have been a more common occurrence. For instance, in 1967 the schools in New York City were without the services of teachers for most of September. A number of issues were involved in the walkout. The Board of Education presented a statement of the issues as it saw them. The following excerpt summarized the Board's position on one issue:[5]

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[3] Calvin Coolidge, Have Faith in Massachusetts, A Collection of Speeches and Messages (Houghton Mifflin Co., Boston, 1919), 222-224.

[4] Ibid., 225-227.

[5] The New York Times, Sept. 20, 1967, 36.

> [The article cites the concern of the Board of Education that the strike is adversely affecting the education of public school children. The teacher's union is described as unyielding. Its demands are discussed and some concerning policy and experimentation are criticized as being inflexible and impractical.]

6. The usual issues involved in a strike, salary and working conditions were settled by September 21. Still the schools remained closed. The following story appeared on the front page of The New York Times on September 25:[6]

> [Disagreement over the More Effective Schools program is the stumbling block. The Board questions the effectiveness of the expensive experiment and prefers to spread its funds throughout the entire system.]

7. On September 28, The New York Times reported that the dispute had been settled and published a summary of the agreement. Among the highlights was the following statement:[7]

> [The Board of Education is reported as granting a number of special programs, as desired by the union, and promising to reserve funds for the development of new programs in elementary schools.]

8. The Board of Education had attempted to prevent the teachers walkout by securing a court order restraining the teachers from striking. When this order was ignored, the Board brought a suit against Albert Shanker and the United Federation of Teachers for criminal contempt of court. Justice Emilio Nuncz of the New York State Supreme Court handed down his decision on October 5, 1967:[8]

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[6] Ibid., Sept. 25, 1967, 1, 51.

[7] Ibid., Sept. 28, 1967, 50.

[8] Ibid., Oct. 5, 1967, 34.

> [The union claimed that its members "resigned" rather than struck. The court questioned their manner of "resigning" and declared that a strike existed and that the action of the members was therefore illegal. Coolidge's statement on the Boston Police strike is quoted in part. The Court states that the union must respect the law. The union was fined and its president sentenced to jail.]

9. In A Thousand Days Arthur M. Schlesinger, Jr., described a different scene but one which dealt with the same problem, that of the expert attempting to influence policy.

Exasperated over the difficulty of getting the State Department to move quickly enough to suit him, President John F. Kennedy asked Charles Bohlen, then Undersecretary:[9]

> [The selection describes Kennedy's exasperation at the slowness in the Foreign Service to respond to his requests, and explains the reasons for delay. The professionals knew from experience that all actions could have complex implications, that new approaches seldom change situations drastically, and that bold action can lead to public distrust and even personal disgrace.]

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[9] Arthur M. Schlesinger, Jr., A Thousand Days (Houghton Mifflin Co., Boston, 1965), 431.

SECTION II

THE GROWTH OF AN INSTITUTION

Every government needs reliable personnel to perform the myriad tasks of public administration. This section sheds some light on the development of the American civil service and suggests some of the problems which emerged during the two periods under consideration, the early days of the republic up to and including the ''Jacksonian Revolution" of the 1830's and the era of the post-Civil War reforms.

A. Four Early Presidents

Part A presents some statements made by early presidents on the subject of the civil service. They were speaking as leaders in an agricultural society where wealth and suffrage was based upon land ownership. At that time the civil service was small by any standard as comparatively few services were provided in that relatively simple society.

Washington developed a civil service that reflected the "Establishment" of his times. While he stressed honesty and efficiency, he seldom searched far beyond the ranks of the Federalist party. This policy, continued by Adams, resulted in a Federalist bureaucracy that was considered unsuitable to the new Republican government of Thomas Jefferson. Despite Jefferson's emphasis on equality the civil service reform during his administration was actually limited to transfering power from the New England aristocracy to the new aristocracy represented in New York, Richmond, and Raleigh. Jefferson accomplished this by exercising presidential prerogative in removing Federalists from many positions and replacing them with Republicans who represented a somewhat broadened base of suffrage and wealth.

The great democratic wave which surged forward in Jackson's day reached masses of the population left untouched by Jeffersonian democracy. In the 1830's white male suffrage spread through most of those states which had hitherto imposed some property restriction, and this resulted in an increased interest in national affairs. In 1824 the aggregate vote in the presidential election was only 356,000; in 1836 it rose to 1,500,000; and in 1840 the vote was 2,400,000, seven times the total only sixteen years earlier.[1] While part of this increase resulted from the growth of population, most of it could be traced to the unshackling of the ballot and to a mounting interest in politics. Presidential electors ceased to be chosen by the legislatures and were elected by popular vote. In national affairs a more rapid rotation in office became the rule. Americans from the west and middle west found entrance to the growing Federal bureaucracy as well as those new elements in the east which previously had not been represented in the civil service under earlier presidents.

1. President Washington was noted for his worthy appointments to public office. In the following letter to his Secretary of War, Timothy Pickering, Washington stated a major consideration in making his selections:[2]

> [Washington advises choosing aids who have the respect of the people and hold popular views; in particular they must be men whose appointment will raise the least possible "clamor" and opposition.]

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[1] Allan Nevins and Henry Steel Commager, A Short History of the United States (Alfred A. Knopf, New York, 1966), 195.

[2] Worthington Chauncey Ford, ed., The Writings of George Washington (G. P. Putnam's Sons, New York, 1892), XIII, 106-108. [Footnote omitted.]

2. From the writings of John Adams:[3]

> [Adams notes that men can be divided into two classes by virtue of their education: common people and gentlemen. If the latter should properly govern there arises the problem of how to select these men. He observes that gentlemen are often richer, more powerful and better connected than their common counterparts.]

3. A letter from John Adams to his Secretary of the Treasury:[4]

> [Adams denies that he decided against a potential aid on account of that man's democratic persuasions. He is careful to choose circumspect men, he claims, but he does not automatically reject those whose political beliefs differ from his own.]

4. As a result of the election of 1800, the executive branch of government for the first time came under the control of a rival political party. Jeffersonian Republicans were victorious throughout the nation and meant to make great changes. Thomas McKean, who had been elected Governor of Pennsylvania, wrote to President Jefferson in July, 1801 about replacing some appointed office-holders:[5]

> It appears . . . that the anti-Republicans, even those in office, are as hostile as ever, though not so insolent. To overcome them they must be shaven, for in their offices (like Samson's hair-locks) their great strength lieth; their disposition for mischief may remain, but their power of doing it will be gone. It is out of the common order of nature, to prefer enemies to friends; the despisers of the people should not be their rulers.

5. In two letters written in 1801, the first year of his administration, Thomas Jefferson discussed his aims in making appointments to public office:[6]

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[3] Charles Francis Adams, The Works of John Adams, Second President of the United States (Charles C. Little and James Brown, Boston, 1851),

[4] Ibid., IX, 87.

[5] Carl R. Fish, The Civil Service and Patronage (Longmans, Green,

[6] Saul K. Padover, ed., Democracy By Thomas Jefferson (D. Appleton-Century Co., New York, 1939), 54.

> [Jefferson declares that a man ought not to be removed from office on account of political opinions differing from his superiors' beliefs. He urges those who share this view to unite in order that the best man be drawn to government service and that the people learn tolerance etc. from this example.]

6. After his retirement from public office, Jefferson further explained his views on necessary qualifications for public service in a letter dated October 28, 1813, written to his bitter rival of earlier years, John Adams:[7]

> [Jefferson admits that there is a natural aristocracy, but he sees it based on virtue and talent. Wealth and birth are artificial distinctions. He disagrees with Adams on the place of wealthy men in government and advocates popular election of all legislators.]

7. When Jefferson removed an official appointed by his predecessor to the office of tax collector of New Haven, a committee of merchants of that port sent him a "remonstrance":[8]

> Washington, July 12, 1801.
>
> Gentlemen,--I have received the remonstrance you were pleased to address to me, on the appointment of Samuel Bishop to the office of collector of New Haven, lately vacated by the death of David Austin. . . .
>
> Of the various executive duties, no one excites more anxious concern than that of placing the interests of our fellow citizens in the hands of honest men, with understandings sufficient for their stations. No duty, at the same time, is more difficult to fulfil. The knowledge of characters possessed by a single individual is, of necessity, limited. To seek out the best through the whole Union, we

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[7] Saul Padover, ed., A Jefferson Profile, As Revealed in His Letters (The John Day Co., New York, 1956), 217-218, 221-222.

[8] H. A. Washington, ed., The Writings of Thomas Jefferson (Taylor and Maury, Washington, 1854), LV, 402-405.

must resort to other information, which, from the best of men, acting disinterestedly and with the purest motives, is sometimes incorrect. . . .

The removal, as it is called, of Mr. Goodrich, forms another subject of complaint. Declarations by myself in favor of *political tolerance*, exhortations to *harmony* and affection in social intercourse, and to respect for the *equal rights* of the minority, have, on certain occasions, been quoted and misconstrued into assurances that the tenure of offices was to be undisturbed. But could candor apply such a construction? It is not indeed in the remonstrance that we find it; but it leads to the explanations which that calls for. When it is considered, that during the late administration, those who were not of a particular sect of politics were excluded from all office; when, by a steady pursuit of this measure, nearly the whole offices of the United States were monopolized by that sect; when the public sentiment at length declared itself, and burst open the doors of honor and confidence to those whose opinions they more approved, was it to be imagined that this monopoly of office was still to be continued in the hands of the minority? Does it violate their *equal rights*, to assert some rights in the majority also? Is it *political intolerance* to claim a proportionate share in the direction of the public affairs? Can they not *harmonize* in society unless they have everything in their own hands? If the will of the nation, manifested by their various elections, calls for an administration of government according with the opinions of those elected; if, for the fulfillment of that will, displacements are necessary, with whom can they so justly begin as with persons appointed in the last moments of an administration, not for its own aid, but to begin a career at the same time with their successors, by whom they had never been approved, and who could scarcely expect from them a cordial co-operation? Mr. Goodrich was one of these. Was it proper for him to place himself in office, without knowing whether those whose agent he was to be would have confidence in his agency? Can the preference of another, as the successor to Mr. Austin, be candidly called a removal of Mr. Goodrich? If a due participation of office is a matter of right, how are vacancies to be obtained? Those by death are few; by resignation, none. Can any other mode than that of removal be proposed? This is a painful office; but it is made my duty, and I meet it as such. I proceed in the operation with deliberation and inquiry, that it may injure the best men least, and effect the purposes of justice and public utility with the least private distress; that it may be thrown, as much as possible, on delinquency, on oppression, on intolerance, on ante-revolutionary adherence to our enemies.

> The remonstrance laments "that a change in the administration must produce a change in the subordinate officers;" in other words, that it should be deemed necessary for all officers to think with their principal? But on whom does this imputation bear? On those who have excluded from office every shade of opinion which was not theirs? Or on those who have been so excluded? I lament sincerely that unessential differences of opinion should ever have been deemed sufficient to interdict half the society from the rights and the blessings of self-government, to proscribe them as unworthy of every trust. It would have been to me a circumstance of great relief, had I found a moderate participation of office in the hands of the majority. I would gladly have left to time and accident to raise them to their just share. But their total exclusion calls for prompter corrections. I shall correct the procedure; but that done, return with joy to that state of things, when the only questions concerning a candidate shall be, is he honest? Is he capable? Is he faithful to the Constitution?
>
> I tender you the homage of my high respect.

8. In the rough draft of his inaugural address to be delivered on March 4, 1829, Andrew Jackson touched on the selecting of civil servants:[9]

> [Jackson propounds the necessity in a democracy of considering the morality, and then the talents, of potential civil servants.]

9. Jackson also expressed his views on appointments to governmental office in a letter dated May 13, 1829:[10]

> [Jackson advocates making "probity and capability" the only tests for civil servants.]

10. Jackson's philosophy on the whole question of appointments was elaborated in his First Annual Message to Congress:[11]

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[9] John S. Bassett, ed., Correspondence of Andrew Jackson (Carnegie Institute of Washington, Washington, 1929), IV, 10-12.

[10] Ibid., 32.

[11] James D. Richardson, ed., A Compilation of the Messages and Papers of the Presidents, 1789-1907 (Government Printing Office, Washington, 1908), II, 448-449.

> There are, perhaps, few men who can for any great length of time enjoy office and power without being more or less under the influence of feelings unfavorable to the faithful discharge of their public duties. Their integrity may be proof against improper considerations immediately addressed to themselves, but they are apt to acquire a habit of looking with indifference upon the public interests and of tolerating conduct from which an unpracticed man would revolt. Office is considered as a species of property, and government rather as a means of promoting individual interests than as an instrument created solely for the service of the people. Corruption in some and in others a perversion of correct feelings and principles divert government from its legitimate ends and make it an engine for the support of the few at the expense of the many. The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance; and I can not but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience. I submit, therefore, to your consideration whether the efficiency of the Government would not be promoted and official industry and integrity better secured by a general extension of the law which limits appointments to four years.
>
> In a country where offices are created solely for the benefit of the people no one man has any more intrinsic right to official station than another. Offices were not established to give support to particular men at the public expense. No individual wrong is, therefore, done by removal, since neither appointment to nor continuance in office is matter of right. The incumbent became an officer with a view to public benefits, and when these require his removal they are not to be sacrificed to private interests. It is the people, and they alone, who have a right to complain when a bad officer is substituted for a good one. He who is removed has the same means of obtaining a living that are enjoyed by the millions who never held office. The proposed limitation would destroy the idea of property now so generally conneeted with official station, and although individual distress may be sometimes produced, it would be, by promoting that rotation which constitutes a leading principle in the republican creed, give healthful action to the system.

11. The "rotation of office" theory provoked many bitter attacks. A famous defense of this position was made in the Senate by Senator Marcy on the occasion of the confirmation of Jackson's nomination of Martin

Van Buren to the post of Minister to Great Britain:[12]

> It may be, sir, that the politicians of the United States are not so fastidious as some gentlemen are, as to disclosing the principles on which they act. They boldly preach what they practise. When they are contending for victory, they avow their intention of enjoying the fruits of it. If they are defeated, they expect to retire from office. If they are successful, they claim, as a matter of right, the advantages of success. They see nothing wrong in the rule, that to the victor belong the spoils of the enemy. . . .
>
> When the Senator from Kentucky [Henry Clay] condemns the present administration for making removals from office, and then ascribes the act to the pernicious system of politics imported from New York, I fear he does not sufficiently consider the peculiar circumstances under which the present administration came into power. General Jackson did not come in under the same circumstances that Mr. Adams did, or Mr. Monroe, or Mr. Madison. His accession was like that of Mr. Jefferson. He came in, sir, upon a political revolution. The contest was without a parallel. Much political bitterness was engendered. Criminations and recriminations were made. Slanders of a most extraordinary character flooded the land. When the present Chief Magistrate took upon himself the administration of the Government, he found almost all the offices from the highest to the lowest, filled by political enemies. That his cabinet was composed of his friends, no one will complain. The reasons for thus composing it will apply with considerable force to many of the officers under the heads of the several departments. . . .
>
> I have good reasons, very good reasons, for believing that it is the gentleman's rule of conduct to take care of his friends when he is in power. It requires not the foresight of a prophet to predict that, if he shall come into power, he will take care of his friends, and, if he does, I can assure him I shall not complain; nor shall I be in the least surprised if he imitates the example which he now so emphatically denounces. . . .

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[12] Register of Debates in Congress, First Session of the Twenty-Second Congress (Gales and Seaton, Washington, 1833), VIII, 1325.

B. Reform of the Civil Service

The period from the 1830's to the Civil War saw the beginning of the industrial revolution, but it was the post-war generation, people who lived in the period of 1865-1900, that defined the shape of the great change. Two modern historians, Allan Nevins and Henry Steel Commager, have described this period:[13]

> [Growth, in population, wealth, political organizations, and transportation systems, characterize the period. Banks and business became important factors in U.S. economy. Strengthened labor unions led to industrial conflicts. Problems arose: the distribution of wealth, control of capital, protection of "political democracy under the impact of an undemocratic economy," assimilation of immigrants, control of natural resources, foreign relations, and adjustment of government to meet urban needs.]

Whereas the complexity of the new society demanded efficiency and skill, its civil service possessed neither attribute, having been geared to an agricultural community based on more folksy virtues.

1. On January 29, 1867, Representative Thomas A. Jenckes, Republican of Rhode Island, introduced a bill "to regulate the Civil Service of the United States and to promote the efficiency thereof":[14]

> While careful in the highest degree in the selecting and training of those who adopt the profession of arms, we have been negligent and even reckless in the mode of choosing our civil servants. Perhaps we have unconsciously deferred to the old idea that war was the nobler pursuit.

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[13] Allan Nevins and Henry Steel Commager, A Short History of the United States, 270-271.

[14] Thomas A. Jenckes, Speech on the Bill to Regulate the Civil Service of the United States and to promote the efficiency thereof: delivered in the House of Representatives, January 29, 1867 (Congressional Globe Office, Washington, 1867), 5-12.

Perhaps, also, it may have been thought hardly worth while to attempt to organize and systematize the civil service and put it under discipline while its members were few and its force widely scattered. The fact is that it has been left almost entirely to personal and partisan control, and its members recruited and selected from local and political influences. . . .

The growth of the nation, notwithstanding the check of civil war, is more rapid and sure than ever. Its civil servants will soon, if indeed they do not now, outnumber the military and naval forces combined. This increase shows the necessity for laws and regulations to govern them.

In the early days of the Republic, even with the rigid application of Jefferson's maxim, there was not entire success in the appointments to the civil service. Yet the plan was tolerable in its results until the change of policy in the administration of President Jackson. From the date of that change the evil results have increased in even a greater degree than the growth of the service. For a while they were not so glaring as to call for correction by positive legislation. The frauds and defalcations which then occurred, and were from time to time exposed, were considered as mere ulcers on a comparatively healthy organization, and not as the evidence of disease which required a thorough renovation of the system for its cure. . . .

It may be questioned whether a more vicious system, or rather want of system, than that now existing can be devised or imagined. The public sale of offices could hardly be worse, for in such case the tenure of the office would be required to be defined and its emoluments made certain before the office could have any marketable price. Something definite must be offered for sale before a sale can be effected. But at present nearly every one of these subordinate offices is filled by some person who gained his appointment by the recommendation of personal and political friends, and not by the application of any test to discovery his fitness for the place he occupies. His compensation is subject to assessments or forced contributions to pay the expenses of conducting elections in which he is not a candidate for office. If he should show any decided ability or special aptitude for the service he has no assurance of promotion, or even of retention. His term of office is limited by the pleasure, caprice, or interest of his superior.

In the corruption of our politics all these places have become the rewards of partisanship. At every change of administration which brings a different political party into power, the time within which a clean sweep can be made depends upon the industry and zeal with which the incoming authorities can hear and decide upon the claims of the new horde of office-seekers clamorous for the reward of their partisan services. The good of the service is seldom consulted in making appointments, and more rarely im naking removals, and the applicants care far less for the public interest than for their own. . . .

The wonder still is, not so much that the Government is served as well as it is, but that with such a mode of selecting its servants it is served at all.

Besides the people have a right to demand that the time and talents of their chief public servants should be employed in performing the duties of the offices to which they are elected or appointed. . . .

Yet what member of Congress does not find a large portion of his time taken from his legislative duties by the solicitations of office-holders and office-seekers? Who has not felt that his dignity has been lowered, as well as his time wasted, and that the independence of the legislator from executive influence, which the Constitution provided for, and which the fathers of the Republic so greatly esteemed, had been compromised by waiting in the antechambers of Secretaries and heads of bureaus for his turn to see the high official about the appointment to or retention in office of perhaps some deputy collector, assistant assessor, customs inspector, or temporary clerk, whom his political friends recommend as having claims upon his attention? . . .

We have seen also that at the change of the collectorship in one of our great ports upwards of four thousand new applications for office were laid before the new collector, all urged against the incumbents and in favor of the applicants upon personal and political considerations. For hearing and decision upon this vast amount of cases his official term would hardly be long enough. . . .

Another evil, and one which may become of greater magnitude and threaten greater danger to the Republic than any other, is that already suggested, of the direct interference of the Chief Executive in the appointment of officers which by law is vested in the heads of Departments, claiming to exercise over these chiefs the power of removal without the assent of the Senate, as well as exercising the power of appointment with the Senate's advice and consent. His will controls the heads of Departments, in whose discretion the Congress has by law under the Constitution vested the selection of these inferior officers. Thus the whole public civil service, in the language of the resolution appointing this committee, is "being used as an instrument of political of party patronage;" and with the leader of the political party in power, or of one that seeks to be in power, in the Executive Mansion, one of the greatest evils which can endanger the existence of a republic springs into existence in the very heart of ours--that of the centralization of all appointing as well as executive power in one person. The framers of the Constitution wisely guarded against this centralizing tendency by the clause already quoted; but under the present system that guard is a nullity.

The measure now before the House is an approximation to a remedy for these evils. . . .

The civil service, like the military and naval should be conducted by the highest talent that can be procured. How it is practicable to obtain that highest talent is the first question that meets us. The best solution of this question seems to us to be to throw open all places in the initial grades of the service to the competition of all. It is the right of the people to have the best administrative officers which their allotted pay can procure; and as it is the duty of everyone of the people to serve the country when required, so also it should be the privilege of every one to have an opportunity to enter the service of he wishes it and can show that he can serve better than any other in the position which he seeks. Let every one have a fair chance. Nor is there any danger that the people will become demoralized and all turn office-seekers when place is accessible to all. The preliminary tests ,rigidly enforced, will exclude all those who cannot prove themselves to possess the requisite fitness. . . .

This bill provides for a central board of examiners, who may call to their assistance eminent civilians and officers in all branches of the service of the Government in any part of the country, for the purpose of hearing and deciding upon the claims of all applicants for their subordinate civil offices. Upon the results of their examinations certificates of fitness are to be given or refused.

The fact that such a system has worked with great success in other countries may not satisfy every one of its practicability in this. In Prussia it has been more effectual than the needle-gun in perfecting, establishing, and enlarging the nationality. In the minor States of Germany it has been of vital importance. Such a system has enabled the French nation to carry on its Government, without great shock to its credit, although the heads of it have often been victims of the guillotine and the bayonet. In England the system, though but partially adopted, has given new life

> to the home service; and its full application to the colonial service is the vital element in its administration.
>
> This measure proposed to extirpate, eradicate, or in plain Saxon, dig up, root out, and throw aside any, every and all kinds of "patronage" in appointments to the public service. The word, the thing, the act, have no place in a republic. . . . The people do not elect a man President in order that he may have the privilege, the "patronage" of quartering all his relations and personal and political friends upon the Treasury, but because they believe that their Government will be best administered by him. . . . When merit is the key that opens the gate to a career in the public service, the "patronage" which has introduced dullness, mediocrity, laziness, and profligacy into it, becomes extinct. . . .

2. The bill failed to pass, but Mr. Jenckes tried again the next year. A joint committee of the two houses of congress inquired into the possibilities of reforming the civil service of the Federal government:[15]

> The phrase, "the civil service," is popularly used to designate all those persons in the employment of the government who are not in the military or naval service, and by whose labors the executive and administrative business of the country is carried on. This service now included more than 50,000 officers, exclusive of that class, which are required by law and by the Constitution to be confirmed by the Senate, and is more numerous than the whole force of the army and navy combined, as authorized by existing laws. About 30,000 of these are in the postal department, and the remainder--about 20,000--are within the scope of the proposed bill. They are employed in the various public offices in discharge of the public business throughout the United States.
>
> This service is divided into several branches and subdivided into numerous grades. . . .
>
> The bill proposes to establish a board of commissioners who shall ascertain and determine the standard of qualification required for a candidate for each class and grade of these inferior offices, and provides that every such candidate shall pass a satisfactory examination in such manner as the board of commissioners shall require before being appointed to any of these places, and shall serve satisfactorily during the period of probation, the limit and conditions of which shall also be fixed by the board before he shall be entitled to a permanent place in the service. It is an attempt to require a certain degree of

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[15] House of Representatives, 40th Cong., 2nd Sess., Report No. 47. Civil Service of the United States (Government Printing Office, Washington, May 25, 1868), 7, 187-188.

fitness in every candidate for the office which he wishes to hold, and to permit no one that does not possess the requisite qualifications to enter into the public service. . . .

In estimating the advantages of the civil service, and particularly if we compare its attractions with those offered by the professions, it is necessary to remember that, though the remuneration may not be high as compared with the law, it is, in the superior offices at least, high as compared with that of the army and navy, and even of the church; but, practically speaking, the money to be earned is the solitary attraction. A clerk in a public office may not even dream of fame to be acquired in that capacity. He labors in an obscurity as profound as it is unavoidable. His official character is absorbed in that of his superior. He must devote his talents and his skill to measures, some of which he may probably disapprove, without having the slightest power to prevent them; and to some of which he will most essentially contribute, without having any share whatever in the credit of them. He must listen silently to praises bestowed on others, which his pen may have earned for him; and if any accident should make him notorious enough to become the suspected author of any unpopular act, he must submit silently to the reproach,, even though it be totally unmerited by him. These are, indeed, the indispensable disadvantages of a clerk in a public office, and no man of sense or temper will complain of them. On the other hand it must be remembered that a person is eligible for admission into the civil service at an early age. He is not required to have taken an university degree, or to have gone through a professional course of education. No outfit is required; he is not compelled to procure uniforms or horses, to hire chambers, or to buy books. He avoids the vicissitudes and uncertainties of an open profession: his advancement, if his conduct is good and his attendance regular, is a matter of course. His position may be obscure, but if he is not praised for his acts. neither is he blamed for them; if he does not enjoy personal distinction, he avoids personal responsibility with respect to the public at large. The income of the civil servant may be more moderate than that of the successful mercantile man, but it is fixed and certain; and when declining health or waning powers warn him of the necessity for rest and quiet, he has the prospect, nay the certainty, of a provision for the close of life, and this is perhaps the strongest motive offered by the state for the fidelity of its servants. . . .

3. Fifteen years later conditions described by Representative Jenckes had not changed and the issue was gaining national attention. During the Presidential campaign of 1880, the battle for control of the growing bureaucracy took on new dimensions with the split within the Republican ranks between the moderate reformers called Mugwumps and the Stalwarts who defended the old system. The reform element won the nomination and subsequently the election. James Garfield soon tried to strengthen his control of the Republican Party by challenging his strongest rival, Senator Roscoe Conkling of New York. The President wanted to place his own supporter into the collectorship of the New York Customs House, thus controlling some thousand patronage jobs previously appointed by the Senator's friends.

A special session of the Senate was called to confirm the nominations, but Senator Conkling successfully blocked any action for almost three months, at which time he resigned his office in a maneuver to force the President to recall the nomination. These events occupied the front page of almost every newspaper in the country for over three months.

In Washington the following item was carried on the front page of The Capitol of May 8, 1881:

> [The] disruption of the Republican party is an assured fact. The election of Garfield at best was brought about by a wonderful, totally unexpected and almost superhuman effort at temporary unity of factions that at heart hated each other worse than they did the common enemy, and even this would not have sufficed had not the Democratic party been also rent by factions as stupid as the Republican factions were malignant. . . . Beyond all doubt the present is the grandest opportunity that has been available to the

> Democratic party since 1873. The Republicans then, like the Republicans now, were both quarreling over spoils and exhibiting their sores. . . . Well, all this can have now, as it had then, but one end. The country will be disgusted, and a Democratic majority will be returned to the Forty-eighth House of Representatives. It is also probable that the vote or two necessary to restore the Democrats to absolute control of the Senate will be gained. This is the outlook from the Democratic standpoint. . . .

4. On May 17, 1881, the editorial page of The New York Herald carried the following attack on the president:[16]

> Nothing could be more unexpected than the resignation of Mr. Conkling and Mr. Platt from the Senate. Yet this is the news which we print this morning--news which will be read with varying emotions by an astonished country. . . .
>
> Mr. Conkling has rights which even a President is bound to respect. He is an older and a better soldier in the ranks of the republican party than the President. He is a loyal republican. His career is distinguished by eloquence, sincerity, purity, a chivalric sense of honor and unswerving devotion to the principles of the party. To him more than to any other political leader does Mr. Garfield owe his election. . . .
>
> If Mr. Garfield proposes to carry on a policy of ostracism and revenge he must make up his mind to the ruin of his administration--the ruin of his own career--the ruin of the republican party. . . .

5. The following day another editorial further defined the political situation as seen by the Stalwarts:[17]

> There are some peculiarities in the condition of the republican party in this State. There is a republican party pure and simple which is robust in its methods and ideas--is free from cant, does not snivel through the nose its daily laudations of its own virtue; admits, in short, that it is a mere political party and proposes to thrive in the ordinary ways in which political parties always thrive, and to act on those inevitable and necessary laws of party conflict which commonly contribute to success. In every republican success in this State this is the organization to which the victory is due. Side by side with it there creeps in and out of conventions and similar

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[16] The New York Herald, May 17, 1881, 8.

[17] Ibid., May 18, 1881, 8.

> places to sickly little faction of dilettanti persons who assume to be possessed of superior virtue, and who, while quite ready to take advantage of any party success when offices are handed about, chronically pretend to be ashamed of the methods by which success is secured. All tendencies to disorganization, all the fires in the rear, all the sore-headed criticisms, all the mean attempts to belittle great party services come from this small faction. These men are "young scratchers," they are civil service preachers, they are scholars in politics, they are everything that is high, pure, magnificent and airy, and they are all Blaine men. It seems to be a singular operation of superior virtue that politicians of this sort want an imaginary purity everywhere in the world except in their Presidential candidate. . . .
>
> Now, outside of this State, in Washington and perhaps in Maine, it is held that this Pharisaical faction is the real republican party in this State, and that its will should be heeded in party concerns, and that nobody should listen to those men who are the leaders of the real republicans. There should be no mistake on this point. Garfield and the rest of them are steeped to the lips in the doctrine of spoils, only they claim that the spoils should go, not to the party, but to a faction they are pleased to consider the party. . . .
>
> An administration fully prepared to act on the lowest level of party doctrine--ready to deliver the spoils to the victors--pretends to go over the head of the recognized leaders of the party in this State and decide for itself who and what is the party, and how the "rewards" shall be handed around. Does not this make a case for an "appeal to the people?" Between the President and the Senators a point is in dispute that can be decided only by the Legislature of this State. . . .

6. A further note entered this controversial struggle for power when The Capital on June 19 carried the following item from the National Associated Press:[18]

> At the present junction of affairs and amid the surroundings which now encompass American politics, he [Conkling] felt himself irresistibly drawn to take sides against the one great and threatening danger to the republic. That danger was the further success of corporation influence in American legislation. He was convinced that

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[18] The Capital, June 19, 1881, 1.

> corporations now controlled enough of State legislation to be all but supreme, and he believed they lacked control of the national law-making power to have the destiny of the republic in their absolute control. While, therefore, he was willing and even anxious to retire from the field of active politics, he could not be willing to have his place in the Senate filled by one who could reasonably be suspected of adding one more to the already too large vote which corporations had in that body, which made laws for the entire republic. . . .

7. The climax was reported to the nation on the morning of July 3, 1881. From the front page of The New York Daily Tribune:[19]

> THE PRESIDENT SHOT.
>
> A CRAZY OFFICE-SEEKER'S CRIME.
>
> THE PRESIDENT'S RECOVERY HOPED FOR.
>
> President Garfield Shot Down in the Railroad Depot at Washington--The Assassin a Half-crazed Office-seeker Named Charles Guiteau--Intense Excitement Throughout the Country--False Reports of the President's Death--His Wounds at First Thought Fatal--The Unfavorable Symptoms Followed by a Sharp Rally at Night--The Change Marked and Hopeful--Sorrow and Indignation Among All Classes of Citizens.
>
> President Garfield was shot yesterday in the waiting-room of the Baltimore and Potomac Railroad Depot, just after his arrival to take the train for New York in company with several members of the Cabinet. The assassin was an apparently half-crazed office-seeker named Charles Guiteau, known in Chicago and Washington as a worthless character. Two shots were fired, one taking effect in the President's shoulder, the other making a dangerous wound in the groin. The assassin was arrested and removed under strong guard for fear of lynching. . . .
>
> Vice-President Arthur remained in this city during the day, but left for Washington last night upon the request of the Cabinet. He received several telegrams from Secretary Blaine, and sent expressions of sympathy and hope to Mrs. Garfield. . . .
>
> Policeman Kearney, of the Island Precinct, who arrested the assassin, makes the following statement of the shooting: . . .

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[19] The New York Daily Tribune, July 3, 1881, 1.

> "Just as he thanked me I heard a pistol shot. I saw the man that I had been watching previously standing about ten feet away in the shadow of the main entrance to the waiting room levelling his pistol across his arm. He fired a second shot before I could speak to him, and darted between myself and the President and Secretary Blaine into the street. The President reeled and fell just in front of me. As he fell he said something that I could not exactly understand, and Secretary Blaine, with a terrified look, pushed toward him, exclaiming: "My God! he has been murdered! What is the meaning of this?" I did not stop longer but ran out after the assassin, and arrested him just as he started across B-st. toward Sixth-st.
>
> "In God's name, man," I shouted, "what did you shoot the President for?"
>
> "His answer was, 'I am a Stalwart, and want Arthur for President.'"
>
> "He still carried his pistol in his hand: it was a large California revolver of large calibre, with a bone handle. He appeared perfectly cool, and offered no resistance, but went quietly to Police Headquarters with me."
>
> . . .

8. Guiteau explained his action in an interview published soon after the President's death:[20]

> Among the papers found on Guiteau's person, after his imprisonment, was one addressed to Gen. Chester A. Arthur, as the President of the United States. Assuming that the shot would prove fatal, Guiteau claimed that he had made Arthur President, and consequently proceeded to advise him respecting the construction of his cabinet, suggesting Mr. Conkling as Secretary of State, Levi P. Morton as Secretary of the Treasury, John A. Logan as Secretary of War, Emory A. Storrs of Chicago as Attorney General, and the retention of Mr. James in the Post Office Department. The secretaryships of the navy and of the interior he considered of no importance.
>
> A few days after the assassination, he held a long conversation with his brother-in-law, Mr. Scoville, in the presence of the district attorney and a stenographer, in which he imparted the history of his own purposes: "It came to me first," he said, "as a revelation from God, while I was in bed one evening about six weeks ago. It came as a

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[20] Assassination of President Garfield in Washington, July 2, 1881 (Binders Title, James A. Garfield Pamphlets. No author, publisher, or printer cited, Newberry Library Collection, Chicago), 983.

> revelation to me that I should kill Mr. Garfield, and end the difficulties existing in the Republican party. The next morning, when I got up, I thought it over. I thought of it afterward, day after day, and the more I thought of it, the more I became convinced it was the will of God that I should kill Mr. Garfield. I had nothing against him personally that I should kill him. I respected him very much, and think him a very worthy man; but the welfare of the country and the Republican party seemed to me to require that I should put him out of the way. The differences existing in the Republican party would cease, the party would become triumphant, the stalwarts ruling, and the party, in fact, would become stronger than ever. I became satisfied that it was the will of the people, too."
>
> "How did you find out it was the will of the people? Did you go and ask people or speak to them about the thing?" asked Mr. Scoville.
>
> Guiteau laughed at this. "Of course," said he, "such a thing would not do. It would not do for me to tell people what I was going to do. No human soul knew of it; no human being knew a word of it, or had any intimation of my intention in this matter. I studied the newspapers every day, and found from them what the people wanted. I cut out slips from these papers every day, which showed that, if the stalwarts got into power, the country would be satisfied, and all differenced would be ended. All the slips so cut out by me were enclosed by me to Attorney-General MacVeagh, together with my explanation of why I was going to shoot the President, and I asked him to publish the whole in a newspaper. He has done me a great wrong in not having done as I requested. The people ought to have my reasons, and they would see why I did so." . . .

9. Two years after the assassination of President Garfield, a bill "to regulate and to improve the civil service of the United States" was passed by Congress and signed into law by President Chester Arthur, who had formerly opposed such a measure:[21]

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorised to appoint, by and with the advice and consent of the Senate, three persons, not more than

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[21] *The Statutes at Large of the United States of America for December, 1881* to *March 1883* (Government Printing Office, Washington, 1883), XXII, 403.

two of whom shall be adherents of the same party, as Civil service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners. . . .

Sec. 2. That it shall be the duty of said commissioners:

First. To aid the President, as he may request, in preparing suitable rules for carrying this act into effect and when said rules shall have been promulgated it shall be the duty of all officers iof the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

Second. And among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political

> fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.
>
> Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body. . . .
>
> Sec. 7. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. . . .
>
> Sec. 10. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act. . . .

10. The controversy was not over. On March 31, 1886, the Senate discussed a bill to repeal the civil service law. Senator Vance, Democrat, from North Carolina spoke in favor of repeal:[22]

> In my honest opinion no more unmistakable signs of the decay of public fvirtue in politics has been furnished by American history than the rise, if indeed it can be said to have arisen, of that maudlin political sentiment which we recognize, forwant of a better, under the name of "Mugwampism," a kind of sickly, sentimental Sunday School "Goody Two Shoes" party which appears desirous of running the world not as God has made it, but as they would have it. Under the fair guise of liberty, moderation, and public integrity, its tendency, if not its purpose, is to destroy the manhood, the outspoken courage of bluff Anglo Saxon statesmanship, and seeks to substitute therefore a hybrid system of Pecksniffian snivel, which is to be in our politicswhat cant is to true religion, what Pharisaism is to the divine virtue of humility, and which will ultimately prove, like all other hybrids, imply an unhappy mixture of the more ignoble qualities of each parent. . . .

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[22] Zebulon B. Vance, *Speech delivered in the United States Senate, March 31, 1886* (R. O. Polkinhorn and Sons, Washington, D.C.) 2-3, 5-7, 14.

The passage of the civil-service law, as I have intimated, was an attack upon the rightful prerogative of the Executive and a blow aimed at the integrity of political parties. It will be felt in all that parties are intended to preserve--the institutions of our country. The cornerstones of those institutions are:

First. The eligibility of all qualified freemen to hold office, and therefore the right to seek office at the source of power.

Second. A brief term of office.

Three. A direct and immediate responsibility of all elective officers to the people.

Fourth. A mediate and indirect responsibility of all appointed officers to the people through the direct and immediate responsibility of the appointing power.

All these essential features of our constitutions of government are contravened by this law known as the civil service act.

Every citizen of the United States is qualified by law to hold any offices unless the disqualification appear in the Constitution itself.

Again this law, by restraining the Executive power of removal and appointment, tends to the establishment of a privileged class of officeholders with a tenure for life. It favors the setting apart and consecrating of a portion of our citizens to the honors and emoluments of office to the exclusion of others, in imitation of the aristocratical institutions of Great Britain and of the Continent, and still further back, in imitation of the family of Levi, which, among the Jews, was exclusively devoted to the priesthood, leaving all the burdens of state, either in peace or war, to be borne by the other tribes. . . .

The one grand idea which actuated the earliest settlers of the American wilderness was the desire to escape from irresponsible hereditary power, from class rulers, from a government which could not be changed, if bad and oppressive, without revolutionary violence. By tracing the history of the principal streams of emigration which constituted our colonial blood, it will be observed that each one was seeking to escape from political or ecclesiastical oppression in one form or another, for which there was no redress by peaceful or constitutional means. . . . It is, perhaps, not too much to say that the chief means upon which they relied for the preservation of their liberties and to prevent the recurrence of the evils from which they had fled was the constitution of the offices of all their rulers upon brief tenures, to be frequently changed and to be directly responsible to the source of power. . . .

If the Chief Magistrate can hold his office for four years only, why should a clerk hold his for life? If the President after four years of diligent and patriotic service must submit himself and his deeds again to the judgment of his fellow-citizens, why should his subordinates be granted exemption from like submission and be endowed with official immortality? . . . If the system work well with the minor officer, will it not work equally with the major? And if that be true, will we not soon begin to extend it? Indeed it was announced in the discussion of the bill that it was tentative, and it was intended to be extended, as experience justified, to the whole civil service of the Government. . . .

There are, indeed, among us very many strong, influential men who heartily detest the excitements and the turmoil of freedom by which they are brought into contact with their legal but not their social, equals as they fancy. Once in office they prefer to stay there without the trouble and disturbance of re-election. It is naturally and selfishly so in all ranks and classes. The national banks want the privilege of supplying the currency, and do not want to be disturbed by any legislation except such as they apply for. The manufacturers, entrenched behind protective duties against the competition of all the world, deplore any "tinkering with the tariff." With the wail of the martyr who first feels the fire the railroad monopolists pray to be protected against legislative mobs and to be permitted to enjoy whatever they may get in peace. The bondholders too join in the plaintive song of protest with all the privileged classes of society. And so soon as the clerk finds himself ensconced in a snug position he also raises the same tune, which is indeed a common meter and prays to be delivered from the dangers of a change in administration. They all fear the restless insistence and persistence of that terrible mob called the people; that fierce democracy who, in season and out of season, will demand that control over their rulers which they know to be indispensable to the preservation of their rights. But fear not, ye of little faith; no amount of laws to restrain their power, no amount of argument to show wthem their incapacity for self-government, will ever induce them to relax their hold upon the throttle of the engine. . . .

Presidential elections are often complained of in these latter days; they are said to engender much and very dangerous excitement; to be revolutionary in a moderate way; and particularly to disturb the stock market; and propositions are loudly made to diminish their frequency and to enlarge the Presidential term. This is in the direct line of civil-service reform, which consists in getting as far as possible away from the control of the people. It would indeed be a great convenience to the occupants of that exalted position if elections were not so frequent. It would indeed be acceptable to that entire class of our fellow-citizens who wish to enjoy in a dignified and easy manner all the benefits of order and good government without the trouble of going through the ceremonies and the labors required to furnish it. . . .

In the discussion upon the passage of the bill the term of reproach, "spoilsman," was frequently used and is still being used against its opponents, chiefly by Republican orators and Mugwump papers. Having had an uninterrupted swig at the Treasury for nearly a quarter of a century during which time there was more money expended and stolen, ten times over, than in all the life of the Government before; and having excluded their adversaries from participation by test oaths, constitutional amendments, and unconstitutional laws so long as possible; and having finally, in the last hours before death, provided for the retention of their friends in office, even after the people had solemnly decreed their ejection, they now sit benignly in their places,and, under the shelter of this act, cry "spoilsman" at every poor Democrat who may say a word in opposition.

The behavior of the Republican advocates of this law about the time of its passage was not only remarkable, it was shameless. In the face of their allegations that the spoils system was corrupt, and that by it we could not possibly get good and competent officials, they not only defeated by a solid vote in the Senate the amendment of Mr. Pugh, as I have stated, requiring their friends already in to submit to examination, but they had haste to fill every possible vacancy with their partisians before the law took effect. It is an open secret that on Saturday, the 14th of July, some of the heads of Departments in this city spent the entire day and night, far into Sunday morning, in filling every vacancy, promoting their friends and kin and degrading their political enemies. The law was to go into effect on the 15th of July. Quite a number of new clerks had been provided for by the appropriation bills for the fiscal year beginning July 1, and a full supply of applicants had already passed the civil service examinations and stood by waiting for the law to go into effect. But when the offices opened on Monday, the 16th, not a vacant place was anywhere to be found; every one was occupied by a Republican or kinsman of the appointing officer. And the men who perpetrated this fraud on their own law, with the cheek of a town cow, cry "spoilsman," at every man who denounces their hypocrisy; and Democrats are found who by their votes here sustain these men in the retention of their ill-gotten spoils, and who seem to think that fraud and hypocrisy constitute the necessary overture to the grand symphony of reform. . . .

SECTION III

THE MODERN CIVIL SERVICE

After a long illness, the death of the old order in 1929 ushered in a new concept of government responsibility for the welfare of great segments of society that had been dislocated by the shock of the new industrial system. Periodic rumblings of maladjustment were heard in the period of 1880 to the World War I and were answered by the Progressive movement which challenged a laissez-faire government and succeeded in providing some new services which resulted in a corresponding increase in civil service bureaucracy. But the real turn of events came with the crash of 1929, when society was forced to recognize its industrial nature and its concomitant obligations. The conditions of society in the depths of depression and the response of the New Deal are again well described by Commager and Nevins in their *Short History*.[1]

> [The article outlines F. Roosevelt's programs to relieve and reform economic conditions: Federal loans to businesses, public works programs for construction etc., unemployment relief, conservation of natural resources, regulation of banks, anti-trust legislation, tax reform, and reorganization and reform of the administration.]

The governmental activities necessitated by the crisis of World War II combined with the recently created New Deal bureaucracies produced a maze of duties, sometimes conflicting, often overlapping, always inefficient in this period of crisis. To some, the bureaucracies became the most hated symbol of the New Deal. Due to the complexity and sheer size of these agencies they became semi-autonomous and behaved as miniature legislatures in that their rulings virtually became national law.

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[1] Allan Nevins and Henry Steele Commager, *A Short History of the United States*, 477, 483.

The arrival of the Republicans in Washington in 1952 did not change the machinery of the bureaucracy to any great extent. The next significant change had already occurred with the arrival of the scientist in World War II. The expertise of the new arrivals, combined with the nature of the bureaucracy itself, raises basic issues for our present version of democracy.

A. Charts and Tables

The following tables and charts all indicate the growth of bureaucracy and the present day scope of government in the United States.

1. Growth of the Competitive Civil Service in the Federal Government:[2]

[The chart shows that the percentage of federal employees under civil service has risen from 20.4 in 1891 to 84.9 in 1954.]

2. Percentage Distribution of All Government Workers in the United States, 1900 to 1950:[3]

[The chart indicates fluctuations in the percentages of people employed in various government undertakings. In general the role of the Federal Government as employer has grown, especially in the area of defense jobs.]

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[2] Adapted from Commission on Organization of the Executive Branch of the Government, *A Report to the Congress* (Government Printing Office, Washington, 1955), 97-98.

[3] Moses Abramovitz, *The Growth of Public Employment in Great Britain: A Study by the National Bureau of Economic Research* (Princeton University Press, Princeton, 1957), 111.

3. Growth in Public Employment, 1929 to 1956:[4]

[The graph shows that the number of Federal employees was exceptionally high in 1940-45. Local and State employees have risen in number in a steady fashion from 1929 to 1956, the last date mentioned.]

4. Growth in Public Employment, 1946 to 1965:[5]

[The graph shows that the number of people employed at the State and local level has risen faster than the Federal leven in the 1946-64 period.]

5. Functional Distribution of Public Employment, October 1965:[6]

[The graph shows that the largest number of public employees are in education at the State and local levels.]

B. Civil Service Since the New Deal

The decade between 1930 and 1940 saw unprecedent growth in public employment and a marked change in the attitude of the average American toward the role which government should play in the regulation of society. Bureaucracy became a center of power.

1. Leonard D. White, a leading authority on public administration and for several years a member of the United States Federal Service Commission, commented on patronage on the state level in the 1930's:[7]

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[4] Irving Stern, "Government Employment Trends, 1926-56," *Monthly Labor Review*, July, 1957, 812.

[5] Bureau of the Census, *Chart Book on Governmental Finances and Employment: 1966 Series G.F. - No. 7* (*Government Printing* Office, Washington, 1966), 13.

[6] *Ibid*.

[7] L. D. White, *Politics and Public Service* (Harper and Brothers, New York, 1939), 151. [Footnote omitted.]

> [White cites Missouri as an example of a state in which patronage firmly controls state appointments. He gives examples of mass replacement by a new administration of previous appointees.]

2. On the relationship between patronage and politics Leonard White said:[8]

> [Democratic office holders contributed a substantial amount to their party in the 1936 campaign; Republicans however contributed little to their party.]

3. James A. Farley, chairman of the Democratic National Committee in the early years of Franklin D. Roosevelt's administration, looked at patronage from another viewpoint and expressed his opinion in a popular magazine of the period:[9]

> [Farley defends the patronage system and regrets that the term has fallen into ill repute. Both parties he explains have used the system although the controversy has centered upon him as party chairman; his article on patronage began the furor. Farley outlines the steps necessary in changing the administration from one party to the other. He describes hoards of job seekers and claims that recommendations from politicians helped him choose the people who would work best with the administration and the public. Civil Service remained in effect of course but the remaining jobs had to be filled by men who were qualified and in agreement with Roosevelt's aims. Admittedly the system tends to build party machines, but if these machines are found intolerable they will be voted out of power by the public.]

4. Leonard White went on to comment:[10]

> [White describes the changes in their civil services effected by German Republicans, German Fascists, Italian Fascists, etc. In all cases the ranks were filled predominantly by sympathizers with the new regimes. In our country, the two parties are in essential agreement about the institutions

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[8] _Ibid_., 39.

[9] James A. Farley, "Patronage and the New Deal," _American Magazine_, September 1938, 76-78.

[10] Leonard D. White, _Politics and Public Service_, 131-133.

> of government, and the civil service remains relatively constant when the administration changes hands. This harmony is fortunate since we have not had a stable civil service which could in itself protect national unity in the face of change.]

5. In August, 1939, Congress passed a law entitled "An Act to prevent pernicious political activities," better known as The Hatch Act:[11]

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives. . . .
>
> Sec. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes. . . .
>
> Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. . . .
>
> Sec. 9A. (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

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[11] Statutes at Large, 76th Cong., 1st Sess., 1839 (Government Printing Office, Washington, 1939), 1147-1149.

> (2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him. . . .

6. In November, 1952, Republicans gained control of the Presidency for the first time in twenty years. From an article entitled "The Little Oscars and Civil Service" published in Fortune just before President Eisenhower took office:[12]

> [The article points out that Eisenhower's appointees must work with many men left over from the last administration and some of these are in disagreement with the aims of the new administration. The writer cites criticism of some of the old "New Dealers" for misrepresenting facts to justify unrealistic policies, and for creating large departments as part of Empire Building. The writer explains that the new businessmen-administrators must weed out the civil service at both top and bottom in order to run an efficient operation.]

7. From his vantage point as a top level member of President Kennedy's White House staff, Arthur M. Schlesinger, Jr., commented on a different aspect of the relationship of the President to the bureaucracy:[13]

> [Schlesinger explains that after the Bay of Pigs incident, Kennedy's aids made a great effort to know what went on in the foreign affairs bureaucracy. Their actions were criticized at times as meddling. Kennedy wanted to allow dissent, but at the same time he wished that his programs be adopted. The President and the department never did establish an amicable working relationship.]

8. Two scholars have summed up the attitude of the bureaucratic in a recent book entitled The Makers of Public Policy:[14]

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[12] "The Little Oscars and Civil Service," Fortune, January 1953, 77-78. [Footnote omitted.]

[13] Arthur M. Schlesinger, Jr., A Thousand Days, 422-442.

[14] R. Joseph Monsen, Jr. and Mark W. Cannon, The Makers of Public Policy: American Power Groups and Their Ideologies (McGray-Hill, New York, 1965), 237-238, 256-257.

> [Government agencies, created by the public to serve as many of its members as efficiently as possible tends to increase their size and their autonomy.
>
> Agencies are often instrumental in bringing about new legislation which will enhance their own scope and power. They are and will be the most significant force in shaping American public policy.]

9. After a 14 year career in public administration, Paul Appleby became Dean of the Maxwell Government School of Citizenship and Public Affairs of Syracuse University. He made the following observations on the nature of bureaucracy:[15]

> [The administration receives and reconciles various popular demands. Demands which are not easily met on a lower level move up and become issues of policy. Sometimes these matters become partisan issues in a political effort to attract majority support. The public controls its government by its power to approve the actions of that government. Governmental power in a democracy must be a fusion of political and social spheres.]

C. The Expert and Public Responsibility

Since World War II a new twist has been added to the hazy bureaucratic picture. Some of the functions of the civil servant have been duplicated by the non-government expert who only works part-time with the government. The proper role of these new "advisors" presents a problem puzzling even to experts in public administration. This section presents some conflicting suggestions as to how the present generation might face the issues involved.

1. Dwight D. Eisenhower, in his farewell address delivered on January 17, 1961, touched on the implications which the formation of a scientific-

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[15] Paul H. Appleby, "Public Administration and Democracy," Public Administration and Democracy, Essays in Honor of Paul H. Appleby, Roscoe C. Martin, ed. (Syracuse University Press, 1965), 338-339.

technological elite raises for the democratic process:[16]

> [Eisenhower points to the growing complexity of technology and resulting changes in our "military industrial posture." Research is now largely under the direction of the Federal Government. Eisenhower claims that this invasion of government into free inquiry ought to be gravely considered. We must be wary of allowing the industrial-military group to influence public policy and we must try to integrate the new forces into our democratic society.]

2. Congress, too, is concerned over the proper place of the scientist in modern government. In 1963 Senator Bartlett, Democrat of Alaska introduced a bill to establish a congressional science advisory staff. Speaking in support of his bill senator Bartlett stated:[17]

> The economy, the geography, the culture, and the structure of our society are being changed by this burst of science and the change will evermore quicken.
>
> Any committee studying the Congress should give its attention to this incredible growth of science--best in size and importance. It is disturbing but true that at the present time the Congress does not understand science and it is also true that science does not understand Congress. Communication between the two must be improved and the Congress must inform itself--for its own protection and that of the people--on the activities of the sciences.
>
> Increasingly, policy decisions made on programs and funds for science and technology affect in their full relevancy not only the security of the country but the liberty and privacy of every human being everywhere. If democracy and representative government are to prevail in this Nation, it is necessary that the Congress understand the importance of these decisions and that it have a role in the making of them. At the present time Congress does not appreciate the importance of scientific decisions

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[16] Dwight D. Eisenhower, Public Papers of the President of the United States, 1960-61 (Government Printing Office, Washington, 1961), 1038-1039.

[17] United States Congress, House of Representatives, 88th Cong., 1st Sess., Hearings before the Committee on Accounts of the Committee on House Administration: Establishment of a Congressional Science Advisory Staff (Government Printing Office, Washington, 1964), 16-17. Hereinafter cited as Hearings.

> and as a result they are made, not in the Halls of Congress but elsewhere, not by the elected representatives but by unknown administrative officials.
>
> In this world of cataclysm, change, and of almost impossible complexity representative democracy is put to severe test. How is a popularly elected government to control its own activities? How are elected officials to direct development of something they cannot understand with implications they do not comprehend. It is this problem to which I would direct the attention of the committee. . . .
>
> I can think of four cases current in which scientific decisions of grave implication were not adequately understood by the public nor by the majority of Congress; First, the apparent discarding of the radiations protection guides in the measurement of fallout. Second, the high level test of an atomic weapon which altered the Van Allen belt and disrupted radio signals. Third, the placing of millions of copper needles intospace. Fourth, the proposed construction of a harbor in Alaska by atomic explosion. Secret choices are made not because--or not often because--there is a conspiracy of secrecy. These choices are made by the highly trained few because we in the Congress and until quite recently, officials in the executive, were unequipped and uninterested in participating. . . .

3. At the hearings, R. C. Carpenter, manager of the Washington office of Callery Chemical Co., made the following point:[18]

> Contrasted with other legislative areas, Congress cannot rely on self-contained judgment in scientific matters. It would be helpful if we could foresee a greater number of elected legislators who have formal scientific training. It is doubtful that this will occur for two reasons: (1) Scientists are dissuaded by their very training from the rigors of the political arena and (2) the public has inherent distrust of scientists which would carry over to the polls.
>
> Mainly, Congress must accept the word of executive branch agencies. Hearings are far too formalized and indirect to give much insight or information. Often, the postures taken are those of congressional accusation or doubt and executive agency defense or evasion. Hearings do not produce a favorable climate for education.

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[18] *Ibid.*, 76.

> Under the best conditions of harmony, where the legislative and executive branches were controlled by the same party, one might expect the greatest objectivity in congressional briefings. It is truly alarming to imagine the disadvantage of Congress if it were organized by the political party in opposition to the one in the White House.

4. While testifying at the hearings, Dr. Heller related the following incident:[19]

> I have talked to some of the people who have given testimony before the select committee and have said, "Why haven't you told the truth? Why didn't you tell them the whole story? You know that this is not true," and they say, "Well, they didn't ask. After all, we cannot throw rocks." Indeed, people who live in glass houses should not. It is dangerous to throw a rock if it is to become a boomerang.
>
> One man, a No. 2 man of one of the major agencies of the U.S. Government involved in the expenditure of research, told me in the presence of Mr. John R. Mitchell, who is in this room with me now, the following: "After all, Congress should not be told the truth. You do not tell children the whole truth. You wean them slowly." This, sir, I submit is an outrageous statement. . . .

5. At the request of Senator Bartlett, an article by Charles R. Wilhide entitled "Has Congress Lost Control?" published in the November, 1963, issue of Aerospace Management was read into the record:[20]

> Senator E. L. Bartlett, Democrat, of Alaska, has offered a bill (S. 2038) which would set up COST (Congressional Office of Science and Technology) to give the legislative branch the expert advice it needs to intelligently pass on the budget.
>
> On the other hand, Herbert Roback, veteran staff administrator of the Military Operations Subcommittee of

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[19] Ibid., 38-39.

[20] Ibid., 20-22.

the Committee on Government Operations, makes a staunch defense of the present structure of Congress. He contends Congress can obtain all the information it needs--if--it wants to use and exert all the powers available to it. Roback is also leery of abdicating "policy" prerogatives to the scientific mind. . . .

Staff Administrator Roback was a defender of the present staff structure long before the Bartlett bill. And he continues to do so. He offers some persuasive arguments for maintaining the present setup and points out some of the pitfalls which a scientist serving as a member of a congressionally controlled body, is going to encounter.

First of all, Roback feels that there must exist an air of faith by the Congress in the various witnesses and agencies which must present their budget requests. In his opinion, the agency budgets are carefully prepared by experienced and conscientious people who are also working for the good of the country. He puts high reliability on the various checks and balances already in existence to prohibit the occasional budget padder or "pet project" type from ever getting his budget request approved. . . .

Roback has sympathy for the high-level Government witnesses who must spend hours, days, or even weeks before congressional committees repeating testimony, putting up with delays, or just sitting when members of the committees answer rollcalls. But, Roback says, this indicates that the burden of proof rests upon the witnesses and in this way Congress continues to exert control.

As a matter of fact, Roback contends that Congress has just as much control over its various functions as it ever did. He feels that when Congress wishes to exert its control, it can do so--and rapidly. And he feels no new committees are needed... . .

The Staff Administrator of the Military Operations Subcommittee thinks the resources available to Congress for expert advice abound throughout the country. In this contention, he is joined by some pretty powerful interests, some of which are included in the various research outfits that have mushroomed since World War II. Among the "resources" available according to Roback, are the Office of Science and Technology--a part of the Executive Office of the President--the National Science Foundation, the National Academy of Science plus the civilian counterparts--any one of which Roback expects would be happy to make its staff and functions available to Congress. . . .

> Roback does not feel advisory scientists--of the type Bartlett proposes--would be comfortable in a political environment. He feels that in the rough and tumble atmosphere of congressional life, the scientific talent would go to waste or the natural scientists would soon become "political" scientists. In this he is joined by others outside of Congress who feel that the establishment of a scientific office beholden to Congress, would increase the hold some people think the scientific community already has on the decision making process in Washington. . . .

6. Representative William B. Widnall, Republican, of New Jersey made the following comment:[21]

> It has been said that Congress must make the right choice between alternatives. One of the problems, however, is that Congress often has no idea of what the alternatives, if any, may be. We have all experienced in our committee work the testimony of executive branch experts, on behalf of projects, that they thought up, and we have probably also experienced a certain sense of helplessness in asking them questions which we hope will illuminate the problem and search out the dark corners of the proposal. What we need, in this tug of war between bureaucratic expertise and the representatives of the people, is a sort of devil's advocate, or "taxpayer's advocate" as Senator Keating has put it, to help us test out the possible self-serving statements of those testyifying before us. . . .
>
> I am told by Senator Bartlett's office, for example, that in one set of hearings by the Joint Atomic Energy Committee, Government witnesses were heard and their testimony published without review. Non-Government witnesses were heard after the publication of this testimony, but their testimony was sent to the Atomic Energy Commission for evaluation and comment. . . .

7. Another eminent authority, Don K. Price, Dean of the the John F. Kennedy School of Government at Harvard University commented on the problem in The Scientific Estate:[22]

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[21] Ibid., 6.

[22] Don K. Price, The Scientific Estate (Harvard University Press, Cambridge, 1965), 80-81. [Footnote omitted.]

> [Price argues that science is presently the biggest threat to our freedom. Science ought not to be closely welded to party politics but should pursue its investigation independently. Scientists now are rising in a bureaucracy which puts a premium on these talents. There are dangers from burgeoning science: scientists might lobby for funds with great popular support gained from promises of technological miracles; government problems might be contracted out to technologically equipped private firms which will then use the funds partly to their own advantage, etc. A sense of morality and responsibility will be necessary for just government. Will traditional religious morality suffice or will new standards be established? The relationship of science to traditional values must be examined for an answer.]

8. More recently Theodore H. White wrote a series of article for Life entitled "Action Intellectuals":[23]

> [White describes the response of Harvard University to the call to public service. Members of that community have responded individually; currently they participate even more actively than usual in government activity. They are motivated partly by discoveries about public power made in their academic work. Many Kennedy advisees are now back teaching and other academics are now in government. Some, such as John Fairbank and Merle Fainsod, writers on foreign affairs, have had informal but far-reaching effect on governmental policy. Academic advisors provide the objective view necessary to the President. In a newly affluent society, intellectuals help to work out new experiments and guidlines. Some recent discoveries challenge even the Constitution, its jury system, and its concept of boundaries. There is a danger that academics might confuse the role of "mapmaker" with that of "tour director," and that they might expect too much of ordinary men. To check the power of this new elite their role in government should be examined and formalized.]

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[23] Theodore H. White, "Action Intellectuals," Life, June 9, 1967, 70, 72; June 17, 1967, 74A; June 23, 1967, 77, 84, 86.

SECTION IV

CIVIL SERVANTS, RIGHTS AND DUTIES

This section raises issues behind the headlines of today's newspapers. In the previous section the role of the expert was viewed from the point of view of the community. In this section the problem is examined from the viewpoint of the individual expert himself.

A. The Moral Responsibility of the Civil Servant

The problem presented by the expert exercising personal judgment outside the area of his expertise raises the issue of the moral responsibility of the individual civil servant faced with the logical demands from the War Crimes trials of the Germans after World War II.

1. During the Congressional hearings on the bill to establish a congressional science advisory staff, Mr. Carpenter of Callery Chemical Company raised another point:[1]

> The current plethora of scientific advice, interpretation, discussion, and explanation has raised an additional problem in the mind of the legislator. He finds that scientists disagree. Advances in science may have important social consequences, This makes a dispute between scientists, about the meaning of an important finding, of substantial concern to the legislator. Broad scientific questions may have several technically satisfactory answers. For example, many types of bridges function properly but appear radically different depending on the civil engineer who designed each one. Teams of scientists also differ in offering proposed solutions to problems. These differences could be resolved if funds permitted multiple approaches, but the magnitude of today's science often rules this out. The Government must choose one approach on the basis of current evidence and the persuasiveness of its proponents.

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[1] *Hearings*, 77.

> Alongside disagreement, there appears scientific bias. This is the human nature of scientists which colors their approach to the layman in the light of their background, training, and affiliation. Science is objective but scientists are not immune to emotional involvement in their projects. The testimony of agencies, the advice of panels, and the witness of individuals all contain areas apart from pure fact, where interpretation is frankly subject to bias. This is not improper, and is not different from the bias of knowledgeable people in other fields such as economics, foreign affairs, or law. If fact, it would be difficult to conceive of a strictly objective scientist making any progress in or out of the laboratory. . . .

2. The story of one famous scientist is selected here to illustrate a basic problem facing all such knowledgeable persons. Dr. Oppenheimer was the first outstanding American scientist to acquire great influence in national affairs. His judgment was first attacked publicly in an article appearing in Fortune in May, 1953:[2]

> [The article presents a case in which scientists disagree, that is, in choosing between two defense systems: the first provides long-range missiles, SAC, and other devices to prevent attack and further to retaliate; the second developes short-range tactical weapons for close combat. J. R. Oppenheimer opposed long-range devices and the Strategic Air Command implying that first it is unreliable and secondly our development of such a system might encourage the Soviets to construct a similarly devastating system. In the 1940's the question arose of whether we should actually build an H-bomb, once we had the capability. L. Strauss said yes. D. Lilienthal, then AEC chairman, opposed the move. Strauss urged a convening of scientists concerned. The group was divided. Truman was advised to hear Strauss and he approved the building of the H-bomb. Oppenheimer as chairman of the State Department disarmament committee tried to halt the testing of the bomb. He was unsuccessful and was not reappointed to the committee. He, J. Zacharias, and others, then changed tactics and tried to persuade the government that an air defense, a "fortress" system, would be the most effective protection and thereby lessen dependence on an offensive weapon. This group continued to study the problem quietly and Strauss became Eisenhower's advisor in atomic defense.
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> The writer states that there arose the question of the propriety of scientists' advise on matters of military strategy.]

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[2] Fortune, May, 1953, 109-110, 130.

3. J. Robert Oppenheimer died on February 13, 1967. In March Science published an article written by Hans Bethe, long-time colleague of Oppenheimer's:[3]

> [Bethe describes the Oppenheimer activities in Washington and stresses the man's opposition to the "more bang for a buck" approach. He tells of the debate among Teller, Oppenheimer and others on the building of an H-bomb and the problems encountered by Oppenheimer in the following years, citing the Fortune article of 1953 which led to Eisenhower's order to terminate Oppenheimer's security clearance. Oppenheimer remained out of favor until 1962 when Kennedy, and later Johnson, welcomed him to Washington. He won the Fermi Award, given by the AEC, in 1963.]

4. An editorial in the same issue of Science headed "J. Robert Oppenheimer":[4]

> [The writer calls the AEC decision to end Oppenheimer's security clearance the great tragedy of the man's life. He explains that Oppenheimer's opposition to the H-bomb development was a belief shared with many other scientists. Oppenheimer raised the question of the moral responsibility of the scientist for the fate of society. His experience showed that scientists must now deal with issues which far transcend their particular competence.]

5. More recently Science carried an item entitled "Advisory Unit Drops War Protestor":[5]

> [The article reports the controversy over the appointment of William R. Taylor of Wisconsin to a White House advisory panel on education. Taylor, known for opposition to the U. S. Position in Vietnam, had served as consultant to the panel and was told of his imminant appointment to it. Taylor then notified the panel secretary that he had participated in "teach-ins," etc., protesting U.S. policy and Secretary Mays assured him that this activity would not prejudice his appointment. Hornig, the President's Science advisor, then told Taylor the appointment was thought unwise: Congressional approval would be reluctant, he claimed. The incident only worsened the already rocky academic-political relationship.]

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[3] Hans A. Bethe, "Oppenheimer: 'Where He Was There Was Always Life and Excitement'," Science, March 3, 1967, 1083-1084.

[4] Ibid., 1059.

[5] Ibid., July 28, 1967, 408.

6. A letter to the editor in the January 20, 1967 issue of Science:[6]

> [The writers, MIT biologists I. Sizer, J. Buchanan, H. L. Teuber and P. Wall, object to the government request that consultants to the National Institutes of Health sign an affidavit claiming cloyalty, etc. The men claim that the government will be best advised by those who have not given up their rights of political expression. Although the restrictions might be suitable for civil servants, they urge consultants to consider carefully the implications before signing the affidavits.]

7. The year before Dr. Oppenheimer was appointed Chairman of the General Advisory Committee of the Atomic Energy Commission, the top leaders of Nazi Germany were sentenced to death by the International Military Tribunal in the course of the famous Nuremberg trials. The Tribunal was established by a Charter adopted by the prosecuting governments:[7]

> [Various articles from the Charter are quoted which deal with the objectives of the trials. The tribunal will investigate crimes against peace and humanity and war crimes. These articles specify that a defendant will be considered responsible for the crimes he committed regardless of his office or his pleas that he was doing official duty or merely following orders. However, the punishment might be mitigated in these cases.]

8. The Nuremberg trials raised many basic issues, and there is a fundamental difference of legal opinion on how these principles affect the activities of civil servants.

From an essay by Herbert Wechsler, published in 1961:[8]

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[6] Ibid., January 20, 1967, 265.

[7] Robert H. Jackson, The Case Against the Nazi War Criminals (Alfred A. Knopf, New York, 1946), 100-101.

[8] Herbert Wechsler, Principals, Politics and Fundamental Law, Selected Essays (Harvard University Press, Cambridge, 1961), 147, 150.

[Wechsler discusses the definition of crimes against peace which appears in the articles of the Nuremburg Charter. By these terms, he argues, every German soldier is guilty of the crime; he claims that common sense rebels against such a judgment. He cites a possible pernicious effect of such an interpretation: members of a nation at war who disagree with national policy might, since they are already judged guilty, neglect to change the policy of the nation or to attempt to mitigate the cruel effects of war on their countrymen and their enemies.]

9. In 1950 an Englishman, Lord Hankey, wrote:[9]

[Hankey discusses the implications of the Nuremburg definition of "crimes against peace." He points out that members of such organizations as the Atlantic Pact plan defenses together and depend for mutual safety on the loyalties of individual planners to their governments. If an individual must in each action weigh his orders against his conscience he will be perpetually in a dilemma and ultimately encouraged toward cowardice and escapism. The writer quotes Field Marshall Montgomery who stated that the trials made unsuccessful warfare a crime, and Hankey points out that by inference even participation in the civil service of a defeated nation is a crime.]

10. From The Nuremberg Trials by August Von Knierien:[10]

[The writer states that while obligations to obey orders must be upheld, there exists, even in the military, some limitations to duty. If the order will result in the committing of a crime then duty lies in disobeying; if the subordinate knows of the consequences and carries out the order nonetheless, he is guilty of the crime. In the case of Germany during W. W. II some individuals obviously were more closely involved in criminal activity than others and the responsibility varies in degree. The lines are not easy to draw.]

B. The Civil Service Organizes

The movement to organize labor into unions to protect and further their interests has a long history dating back before the Civil War, but it is only since the 1930's that unions became the powerful force they are today. The road to success was often bloody and always controversial.

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[9] The Rt. Lord Hankey, Politics Trials and Errors (Henry Regnery Co., Chicago, 1950), 59-60.

[10] August von Knierien, The Nuremberg Trials (Henry Regnery Co., Chicago, 1959), 56, 292.

The people working for the local, state, and Federal governments also made attempts to organize the civil service into unions but without the success realized by employees in private industry. Not until 1962, when President Kennedy allowed Federal employees the right to negotiate collectively on some issues, a right recognized for other unions since 1933, were unions of public employees taken seriously. Since that time there have been a rash of strikes by public employees, particularly at the level of local government.

1. Important events in the history of organized labor in the United States:[11]

> [The section lists selected strikes, labor demands, and relevant government rulings, some twenty items, from 1778 to 1962.]

2. The earliest attempt to unionize public employees occurred in the Post Office Department during theadministration of Theodore Roosevelt. Feeling that working conditions were dangerous for those working on mail trains, the men sought improvements by approaching members of Congress. In response, President Roosevelt issued the following order:[12]

> White House, January 31, 1902.
>
> All officers and employees of the United States of every description serving in or under any of the Executive Departments and whether so serving in or out of Washington

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[11] Important Events in American Labor History (Industrial and Labor Relations Review, Ithaca, N.D.).

[12] James D. Richardson, ed., Messages and Papers of the Presidents, XIV, 6703.

> are hereby forbidden either direct or indirect, individually or through associations, to solicit an increase of pay, or to influence or to attempt to influence in their own interest any legislation whatever, either before Congress or its Committees, or in any way save through the heads of the Departments in or under which ethey serve, on penalty of dismissal from the government service.
>
> THEODORE ROOSEVELT.

3. At a time when postal employees in France were on strike, the following editorial appeared in the New York Sun on May 18, 1909:[13]

> We have asked and obtained permission to quote from a private letter written by President Nicholas Murray Butler of Columbia University concerning a momentious question which he has made recently the subject of several public addresses:
>
> "The newspapers are advising us day by day of the situation in which the French Government finds itself through an earlier temporizing with this question. France will either be a republic or a commune, with all that the word commune means, unless Clemenceau can have public opinion at his back in the attitude which ehe is now taking, sound although belated.
>
> "In my judgment the fundamental principle at issue is perfectly clear. Servants of the State in any capacity--military, naval or civil--are in our Government there by their own choice and not of necessity. There sole obligation is to the State and its interests. There is no analogy between a servant or employee of the State and the State itself on the one hand, and the laborer and private or corporate capitalist on the other. The tendency of public-service officials to organize for their own mutual benefit and improvement is well enough, so far as it goes. The element of danger enters when these organizations ally or affiliate themselves with labor unions, begin to use labor union methods and take the attitude of labor unions towards capital in their own attitude towards the State. In my judgment loyalty and treason ought to mean the same thing in the civil service that they do in the military or naval services. The door to get out is always open if one does not wish to serve the public on those terms. Indeed, I am not sure

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[13] New York Sun, May 18, 1909, 6.

> that as civilization progresses, loyalty and treason in the civil services will not become more important and more vital than loyalty and treason in the military and naval services. The happiness of the community might be more easily wrecked by the paralysis of its postal and telegraph services, for example, than by a mutiny on shipboard.
>
> * * * * * *
>
> "Just as soon as any human being puts the interest of a group or class to which he belongs or conceives himself to belong, above the interest of the State as a whole, at that moment he makes it impossiblefor himself to be a good citizen. It seems to me . . . that a servant of the entire community can not be permitted to affiliate or ally himself with the class interest of part of the community. . . .
>
> "To me the situation which this problem presents is, beyond comparison, the most serious and the most far-reaching which modern democracies have to face. It will become more insistent and more difficult as Government activities multiply and as the number of civil-service employees increases. Now is the time to settle the question on right principles once and for all. . . .

4. In 1912 Senator Robert LaFollett, Republican, of Wisconsin introduced an amendment to the appropriation bill for the Post Office Department. That amendment became Section 6 of the bill as adopted by the Senate:[14]

> Sec. 6. That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, . . . and the Civil Service Commission also shall, upon request, be furnished copies of the same: Provided, however, That membership in any society, association, club, or aother form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said postal service, or the presenting by any such person or groups of persons of

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[14] United States Congress, 62nd Cong., 2nd Sess., Ch. 389, 1912, 555.

any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with. . . .

5. Senator Myers speaking in Congress on April 2, 1920:[15]

Mr. President, the purpose of my amendment is to prevent the affiliation of Federal employees' unions with higher or parent bodies of organized labor or at least to prevent employees of the Government who are so affiliated from enjoying the benefits and privileges of this bill. The real object is to discourage the affiliation of Federal employees' unions with higher and outside organizations.

That brings to an issue before the Senate the question of whether or not, in the judgment of the Senate, Federal employees should be members of organizations which are affiliated with higher or superior or parent bodies of organized labor; in fact, with the American Federation of Labor. I think that question should be decided by the Senate. It is growing in importance. The employees of the Federal Government are being very rapidly gathered into the Federal employees' union, all of which are affiliated with the American Federation of Labor. A large majority of the employees of the Federal Government are now so affiliated, and the American Federation of Labor, I understand, is rapidly gathering in those who are not so affiliated, and it appears to me, unless checked by law, only a question of a short time when nearly all of the employees of the Federal Government will belong to organizations which are affiliated with the American Federation of Labor.

The people seem to be asleep to the dangers that beset them. There are about 530 Members of Congress. Unless there should be a most marvelous, almost a miraculous, awakening of the people, I predict that the Sixty-seventh Congress, which will come into existence in less than a year, will contain at least 200 Members who will be in entire accord with all the demands of organized labor; and that in the Sixty-eighth Contress, which will come into existence in less than three years, there will be at least 400 Members who will be in entire accord with all of the demands of organized labor.

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[15] Congressional Record, 66th Cong., 2nd Sess., LIX, 5132,5140, 5147.

Then, and in that event, I predict a program of legislation to nationalize, as it is called--I call it sovietize--the industries of this country. If that should be the will of a majority of all of the people and in accord with peaceful methods and the provisions of the Constitution of the United States, all right; but I do not believe it would be advisable or in accord with the principles of our Government, and I think the attention of all of the people of the country should be called to the undoubted tendency to that end, in order that there may be a full, fair, and complete expression of opinion of all of the people on the issue, and that a majority may intelligently register its will. . . .

I realize that a great organization, said to have a monthly income of $4,000,000, with its ramifications all over the country, and claiming membership of between four and five million voters, is a formidable combination for any man or party to confront, and if I thought that the units composing it were all in sympathy with the purpose of its rulers I should contemplate the immediate future with some apprehension; but the average citizen of the United States, whether he be a member of a labor organization, a laborer, a farmer, a professional man, or a capitalist, is and must be, first of all, an American, and such, I flatter myself, he is. If so, then reason and reflection will teach him that the exultation of one class in America, which means the degradation of all others, will sooner or later react upon those responsible for such a mighty and sinister change and hasten the very consequences which such action is intended to prevent.

Of course, such a plan leads to a democracy pure and simple, and a democracy acting through the volume of the mass. Without the interposition of representatives or delegates, inevitably becomes a despotism of the most malignant character, where the rights of the minority are not only not respected but flouted and trampled under foot, where the man who talks the loudest and promises the most is the leader, where property rights are overthrown, where justice is denied to the weak, and the immediate impulse of the moment becomes the ruling principle of the majority, only to give way to something more entrancing. History from its beginning, Mr. President, is replete with instances of oppression; and if it be true that history is but philosophy teaching us by example, then we should reflect very seriously over the melancholy fact that no pure democracy, great or small, ever outlived the ravages of time or long survived the uncontrolled and conflicting passions of those composing it. . . .

6. President Franklin D. Roosevelt, a great friend of the labor movement, wrote the following letter to the president of the Federation of Federal Employees on August 16, 1937:[16]

> [Roosevelt understands the desire of government employees for organizations to better their wages, etc., but points out that public employees have a special responsibility to the public and to the government. The people are the employer and lines of command are complex. Roosevelt thinks that collective bargaining is inappropriate for public employees and militant tactics in particular have no place. He applauds the National Federation of Federal Employees for stipulating that they shall not strike.]

7. The basic law which at present guides most union-management relations is the Labor Management Relations Act, 1947, better known as the Taft-Hartley Act. Title III, Section 305 provides:[17]

> It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

8. On January 19, 1962, President Kennedy signed Executive Order 10988 entitled Employee-Management Cooperation in the Federal Service:[18]

> WHEREAS participation of employees in the formulation and implementation of personnel policies affecting them contributes to effective conduct of public business; and

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[16] *The Public Papers and Addresses of Franklin D. Roosevelt* (The Macmillan Co., New York, 1941), 1937 vol., 324-326.

[17] *Legislative History of the Labor Management Relations Act, 1947* (Government Printing Office, Washington, 1948), I, 27.

[18] *Federal Register*, Friday, Jan. 19, 1962, 551-553.

WHEREAS the efficient administration of the Government and the well-being of employees require that orderly and constructive relationships be maintained between employee organizations and management officials; and

WHEREAS subject to law and the paramount requirements of the public service, employee-management relations within the Federal service should be improved by providing employees an opportunity for greater participation in the formulation and implementation of policies and procedures affecting the conditions of their employment; and

WHEREAS effective employee-management cooperation in the public service requires a clear statement of the respective rights and obligations of employee organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by section 1753 of the Revised Statutes (5 U.S.C. 631), and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

Section 1. (a) Employees of the Federal Government shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity. Except as hereinafter expressly provided, the freedom of such employees to assist any employee organization shall be recognized as extending to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress or other appropriate authority. . . .

Sec. 2. When used in this order, the term "employee organization" means any lawful association, labor organization, federation, council, or brotherhood having as a primary purpose the improvement of working conditions among Federal employees, or any craft, trade or industrial union whose membership includes both Federal employees and employees of private organizations; but such term shall not include any organization (1) which asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in any such strike, or which impose a duty or obligation to conduct, assist or participate in any such strike, or (2) which advocates the overthrow of the constitutional form of Government in the United States, or (3) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin. . . .

> Sec. 5. (b) When an employee organization has been formally recognized, the agency, through appropriate officials, shall consult with such organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that are of concern to its members. Any such organization shall be entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. In no case, however, shall an agency be required to consult with an employee organization which has been formally recognized with respect to any matter which, if the employee organization were one entitled to exclusive recognition, would not be included within the obligation to meet and confer, as described in section 6 (b) of this order.
>
> Sec. 6. (a) An agency shall recognize an employee organization as the exclusive representative of the employees, in an appropriate unit when such organization is eligible for formal recognition pursuant to section 5 of this order, and has been designated or selected by a majority of the employees of such unit as the representative of such employees in such unit. . . .
>
> (b) When an employee organization has been recognized as the exclusive representative of employees of an appropriate unit it shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Such employee organization shall be given the opportunity to be represented at discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. The agency and such employee organizations, through appropriate officials and representative, shall meet at reasonable times and confer with respect to personnel policy and practices and matters affecting working conditions, so far as may be appropriate subject to law and policy requirements. . . .

9. In its issue for May 20, 1967, the New Republic published an article entitled "Fresh Breezes in the Labor Movement" written by Gus Tyler, assistant president of the International Ladies Garment Workers Union:[19]

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[19] Gus Tyler, "Fresh Breezes in the Labor Movement," New Republic, May 20, 1967, 13-15.

> [Tyler applauds the currently rapid organization of white collar workers, and government employees, such as teachers, firemen, etc. He cites the Wall Street Journal reaction, that is, strong disapproval of such anarchical trends. Tyler sees the moves as overdue and he points out that bankers, etc., have long been organized. He explains that government regulations have expanded to cover the new spheres of unions, and that Federal employees have taken greater interest in elections, politicking, and legislation affecting their positions.]

10. The following item was published in the October 13, 1967 issue of Time.[20]

> [The article raises the question of who should decide policy in public schools. The teachers' claim to this role is explained and supported to some degree. Teachers' unions are critized on the grounds that their leaders are often concerned more with security than innovation.
>
> The current "drive for teacher power" is seen as divisive. It is recommended that policy be set cooperatively giving teachers more voice than they have had traditionally.]

11. The previous year Time reported another example of union activity:[21]

> [The article reports the unionization of the West German army. The history of the army is reviewed briefly and a hypothetical situation described in which union demands might interfere with the waging of war. Union demands, better pay, etc., are mentioned and objections listed.]

12. In May, 1967, The Public Employee, newspaper of the American Federation of States, County and Municipal Employees, AFL-CIO, reported on a decision handed down by the Supreme Court of California:[22]

> [The article reports a case in which a state employee was dismissed for political activity. The Alameda Superior Court upheld the action but this decision was reversed by the California Supreme Court.]

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[20] "Public Schools," Time, Oct. 13, 1967, 64.

[21] "I'm All Right Hans," Time, Nov. 18, 1966, 42. (Courtesy TIME, The Weekly News Magazine, Copyright Time, Inc., 1966.)

[22] The Public Employee, May, 1962, 13.

13. The same newspaper also reported on the activities of the Union's president:[23]

> [President Wuft explained to a U. S. Senate Committee on Government Operations that AFSCME opposed the setting up of a merit-system for certain government employees on the grounds that the employees would not be able to bargain effectively. He approved of a move to repeal the Hatch Act which forbids government employees to engage in political activity.]

14. From The 72nd Annual Report of the United States Civil Commission:[24]

> SUSPENSIONS:
>
> Note.--The following statements show: (1) Names and addresses of the suspended employees and nature of employment; (2) facts upon which action was taken; (3) date of Commission action; (4) number of days of suspension without pay directed by the cCommission; and (5) effective date of suspension as reported by the employing agency. . . .
>
> Glen W. Butters, Morgan, Utah, employee of Naval Supply Depot, Clearfield, Ogden, Utah; candidate for public office; February 25, 1955; 90 days; effective April 4, 1955.
>
> Harry J. Broering, Cincinnati, Ohio, employee of the Department of the Army; partisan candidate for public office; May 13, 1955; 90 days; effective October 3, 1955.
>
> Willis Conley, Garrett, Ky., employee of Post Office Department; authorized his name to appear in political newspaper advertisement endorsing political party candidate; May 11, 1955: 90 days; effective June 18, 1955.
>
> Lester F. Cosgrove, Weehawken, N. J., employee of U. S. Naval Medical and Dental Supply Depot; Edgewater, N. J.; held political party office; April 6, 1955; 90 days; effective April 16, 1955.
>
> Eva E. Curry, Postmaster, Chandler, Okla.; wrote and had published in a newspaper owned by her an editorial endorsing political party Candidates; December 15, 1954; 120 days; effective March 16, 1955.

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[23] Ibid.

[24] United States Civil Commission, 72nd Annual Report, 1955 (Government Printing Office, Washington, 1955), 204-205.

> Charles L. F. Darneille, Levittown, N.Y., employee of Post Office Department; held political party office; member of an editorial board of a newspaper published under the auspices of a political organization; June 25, 1954; 90 days; effective August 1, 1954.
>
> Paul F. Grebinger, Adamstown, Pa., employee of Post Office Department; candidate for partisan public office; October 1, 1954; 90 days; effective January 1, 1955.
>
> John Hilderbrand, Kansas City, Mo., employee of Post Office Department; solicited memberships in a political party club; September 3, 1954; 90 days; effective October 1, 1954. . . .

15. The Public Employee reported on developments in Canada:[25]

> [Prime Minister Pearson upheld the right of government employees to bargain collectively, arbitrate, and strike. Pearson sees legislation granting these rights as an expression equality and he hopes that the result will be an improvement of government service for the public.]

16. Many of the state governments are reappraising their laws dealing with public employees. The following recommendations were drawn up by an Advisory Commission in a report submitted to the Governor of Illinois in March, 1967:[26]

> SECTION 5
>
> STRIKES AND ALTERNATIVE METHODS FOR RESOLVING
>
> NEGOTIATING AND GRIEVANCE IMPASSES
>
> The strike issue is central to a discussion of public employee-employer relations. Throughout its deliberations, the Commission attempted to keep this issue in perspective and to emphasize two objectives--development of a procedure for eliminating the causes of strikes and formulation of an orderly and equitable system for resolving disputes.

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[25] The Public Employee, May, 1967, 12.

[26] Governor's Advisory Commission on Labor-Management Policy for Public Employees, State of Illinois, Report and Recommendations, March 1967, 2.

The Commission recognizes that many persons consider the right to strike a necessary instrument to protect the interests of employees in private sector bargaining. In the public sector, however, the nature and conditions of employment are different from those in the private sector, as we demonstrated earlier in this Report. These differences convince us that a strike is not an appropriate instrument in negotiations between a government agency and public employees.

We , therefore, have attempted to provide an alternative whereby, on the one hand, the rights of employees are protected and, on the other, the public service is maintained under an arrangement compatible with the political decisions necessary for the allocation of public resources. In our opinion, a procedure for resolving disputes through mediation and fact-finding with recommendations is most likely to accomplish this end.

The pertinent machinery should be designed to avoid two familiar and genuine dangers. The first is overuse of dispute-settling machinery, which often results from unrealistic and irresponsible negotiation and which, in turn, causes a further atrophy of the negotiation process.

The second danger arises from the application of standardized machinery to disputes and relationships that are diverse in character. That danger can be avoided by permitting the parties to devise alternatives more suited to their distinctive needs and relationsuips. Subject to general legal considerations, the statute should permit and encourage the parties to work out their own dispute-settling machinery, including mediation and fact-finding. . . .

Collective negotiation in the public sector, reinforced by orderly appeals to budget-making authorities, could lead to meaningful participation by employees in shaping the terms of their employemnt even though strikes are prohibited. Indeed, the denial of the right to strike furnished additional justification for employee self-determination and for according employees an opportunity to state their demands and grievances in an orderly fashion. .... .

In the hope that disputes about what constitutes a strike and what does not may be avoided, the Commission recommends that the definition of a strike should be broad enough to include such concerted stoppages as mass resignations and mass calling-in-sick, designed to place pressure on a governmental agency. The definition should not extend to demonstrations for the purpose of bringing a dispute to public notice as long as such demonstrations do not interfere with the operation of the public agency.

The Injunction Procedure

> 22. The statute should explicitly affirm the existing power of the courts to enjoin strikes and should also make clear that its provisions are not designed to limit any inherent judicial power.
>
> 23. The statute should provide that the employing agency shall have an affirmative duty promptly to seek an injunction in the event of the occurrence of a strike, and promptly to initiate action for contempt for any violation of such injunction. . . .

17. In its issue for September 1967, Time commented on the effectiveness of injunctions against strikes by public employees:[27]

> [The writer explains that antistrike injunctions have lately been used most often by city governments. Strikers, violating these injunctions, have devised ways of avoiding punishment. It is recommended that essential and non-essential public employees be differentiated and that new fair and effective methods be worked out for bargaining procedure.]

18. A further comment on the relationship between civil service unions and policy issues:[28]

> [The writer points out that management in Federal Agencies often enlists employee support of new programs by offering workers' benefits as part of its recommendation to Congress. This practice will probably increase in scope and affect the structure of unions, and the relationship of the unions and the government.]

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[27] Time, Sept. 29, 1967, 77.

[28] R. Joseph Monsen, Jr. and Mark W. Cannon, The Makers of Public Policy, 235-236.

SECTION V

WHAT NEXT?

This section presents a situation completely new to human experience. The implications of the computer revolution are open to speculation; possibly it represents a social revolution even more far-reaching than the industrial revolution. The corporation which evolved with the Industrial Revolution presented serious problems to which society had to adjust. The newly emerging post-industrial corporation, with its own bureaucratic expertise, presents further complications for the new society. Obviously the institutions of this society are under-going great changes and will continue to do so in your life-time. Your insights and attitudes into these problems will shape the future.

1. In a famous essay entitled Cybernation: The Silent Conquest, Donald N. Michael attempted to envision the implications of automated bureaucracy:[1]

> [Michael explains that computers are necessary in our complex government operations and that confidential information is often part of the computer program. He warns that decisions made by computers could be a threat to democratic government. It would be difficult for citizens to evaluate computer recommendations without access to priviledged information and understanding of computer methods. New training would be necessary for employees if computers become standard tools of government. Already scientists are being recruited for government service in greater numbers. Because computers are useful for some mass problems, such as traffic regulation, planners must not be misled into thinking that they can cure all social ills. Individuality is not recognized by computers and there is the danger that in a computerized society alienation might develop between individuals, and between an individual and government. The computer's use of time however might prove quite useful in planning government programs realistically.]

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[1] Donald N. Michael, Cybernation: The Silent Conquest (Center for the Study of Democratic Institutions, Santa Barbara, 1962), 33-39.

2. In 1961, The Reporter carried an article by David Bergamini entitled "Government by Computer":[2]

> [The article cites predictions that the computer will soon become involved in almost all of man's social actions. Examples are given in law and commerce. The Russian enthusiasm for the use of computers for economic planning is discussed and the warning is given that Americans must soon decide what functions they wish the computer to assume in the national life.]

3. Michael Harrington raised another issue in "The Social-Industrial Complex" published in Harpers Magazine in November, 1967:[3]

> [The writer discusses a recent interest among industrialists in "solving" social problems with a "social-industrial complex." He mentions that the phrase and phenomenon resemble the military-industrial complex which Eisenhower warned against. He sees social needs and the profit motive as often in conflict and finds the development "menacing." Currently, he claims, "There is money to be made in doing good." But in "doing good" business might influence education, etc., in undesirable ways. The new civilization envisioned by the social-industrial complex might well be just as bad as the old one ridden by ills resulting from unfair profit-making. Planning agencies should be independent of the pressures of special groups, be they military or industrial.]

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[2] David Bergamini, "Government by Computer?", The Reporter, Aug. 17, 1961, 26-28.

[3] Michael Harrington, "The Social-Industrial Complex," Harper's Magazine, Nov. 1967, 55-57, 60. (Copyright c 1967 by Harper's Magazine Inc. Reprinted from the November, 1967 issue of Harper's Magazine by permission of author.)

SUGGESTIONS FOR FURTHER READING

The wide range of problems presented in this unit are not covered in any single work but several excellent studies are easily available which discuss each of the broad areas.

Most of the issues are introduced in The Federal Government Service edited by Wallace S. Sayre (Prentice-Hall, Englewood Cliffs, New Jersey, 1965). More detailed treatment of the problems of expertise is given in Public Administration and Democracy edited by Roscoe C. Martin (Syracuse University Press, Syracuse, 1965) and two works by Don K. Price, Government and Science (New York University Press, New York, 1954) and The Scientific Estate (Harvard University Press, Cambridge, 1965).

A valuable and very readable study of a sociological nature is a work by Joseph Bensman and Bernard Rosenberg, Mass, Class and Bureaucracy, The Evolution of Contemporary Society (Prentice-Hall, Englewood Cliffs, New Jersey, 1963). The practical and theoretical problems raised by unionism in the civil service are well presented in two works published by the Public Personnel Association, 1313 E. 60th St., Chicago, Illinois.

Management Relations with Organized Public Employees edited by Kenneth O. Warner, 1963, and Collective Bargaining In the United States Federal Civil Service edited by Willem B. Vosloo, 1966. The latter is particularly valuable as a study of the situation since President Kennedy's Executive Order encouraging collective bargaining.

Literature dealing with society's future is multiplying rapidly. The central question is the degree of change to be brought about by cybernation and modern communication. A fine collection of articles is presented in Automation, Implication for the Future, edited by Morris Philipson (1962) Vintage Books, published by Alfred A. Knopf, Inc. and Random House, Inc.